# Iraq:
# Legal History and Traditions

June 2004




The Law Library of Congress, Global Legal Research Center
(202) 707-6462 (phone) • (866) 550-0442 (fax) • law@loc.gov • http://www.law.gov

This report is provided for reference purposes only.
It does not constitute legal advice and does not represent the official opinion of the United States Government. The information provided reflects research undertaken as of the date of writing.
It has not been updated.

**TABLE OF CONTENTS**


**I. Ancient Times** . . . . . 1

**A. 24th century BCE** . . . . . 1
**B. Babylon and Hammurabi (18th century BCE)** . . . . . 1
**C. Kassite Dynasty Legal Documents (16th-12th centuries BCE)** . . . . . 3
**D. Assyrian Conquest (12th-9th century BCE)** . . . . . 3
**E. Other Conquerors (from the 6th century BCE)** . . . . . 4

**II. Advent of Islam** . . . . . 4

**A. Early Arab Era (7th century CE)** . . . . . 4
**B. Abbasid Caliphs (8th-13th century CE)** . . . . . 5
**C. Ottoman Empire (14th -20th centuries CE)** . . . . . 6
**D. Iraq Under Ottoman and Safavid Rule (15th-19th centuries CE)** . . . . . 7
**E. Reform in the Ottoman Empire (mid 19th century CE)** . . . . . 9
**F. Midhat Pasha and Tanzimat in Iraq (mid 19th century CE)** . . . . . 10

**III. Modern Iraq** . . . . . 11

**A. Early 20th Century Developments (1908-1918 CE)** . . . . . 11
**B. British Mandate (1920-1932CE)** . . . . . 12
**C. Monarchy (1932-1958CE)** . . . . . 16
**D. First Revolution (1958-1963CE)** . . . . . 20
**E. Second Revolution and Continued Instability (1963-1968CE)** . . . . . 23

**IV. Ba'ath Regime (1968-2003 CE)** . . . . . 25

**A. Establishment** . . . . . 25
**B. Saddam Hussein (1979-2003CE)** . . . . . 29

**V. Conclusion** . . . . . 31

# LAW LIBRARY OF CONGRESS

# IRAQ

# LEGAL HISTORY AND TRADITIONS

*This report is a political history, based on consensus views in the international community, including writings by historians and political scientists as well as lawyers. It should be read with the caveat in mind that a legal system as formally described may be quite different from the same system in actual operation. In addition, our knowledge of Iraq for a number of years is circumscribed by the closed nature of the regime that was in power.*

Present day Iraq exists on land known to the ancient world as Mesopotamia. The territory was defined by its position between two rivers, the Tigris and the Euphrates. This location provided two major assets: fertile land, irrigated by river waters that produced a surplus of food, and a good placement for trade with other settlements. While these advantages made the region one of the key sites for the development of human civilization, the location also made the area desirable to outsiders and subject to repeated invasions over the course of its history.[1] The region experienced many types of rule and many formal and informal legal systems. The following is not intended to be a full historical survey; instead, moments in the history of the governance of the area that may be seen as significant for the legal heritage and traditions of Iraq have been highlighted.

## I. Ancient Times

### A. 24th century BCE

Archeologists have located the sites of many of the ancient cities and learned a great deal about the life of the people who lived in them. Each city was a separate state, worshiping its own god, but gradually certain city-states came to dominate others.[2] In the 24th century BCE,[3] Sargon of the city of Akkad called himself the King and ruled over a large part of what is today Iran, Syria, and Turkey, as well as Iraq. His governance represents the first true empire, as he controlled a large region inhabited by various peoples. A written language, cuneiform, had been developed in the city of Sumer for use in the active local and long-distance trade environment, and Sargon ruled through appointed local governors with a group of officials keeping records.[4] Thus Mesopotamia contributed its experience to two major developments in political history, the multinational empire and bureaucratic rule.

### B. Babylon and Hammurabi (18th century BCE)

By the 18th century BCE, rulers from the city of Babylon controlled most of southern Mesopotamia. A long tradition of legal proceedings had already existed, with records kept in each city of the property holdings of the populace, of written contracts between them, and of the judicial decisions

---

[1] For a brief historical survey, *see* WILLIAM SPENCER, IRAQ: OLD LAND, NEW NATION IN CONFLICT (2000).

[2] *Id.* at 18.

[3] BCE = Before the Common Era. CE = Common Era.

[4] *The Cradle of Civilization*, IRAQ HISTORY, *at* http://arabic-media.com/iraq_history.htm.; *supra* note 1, at 17-18.

that settled their disputes.[5] There were laws for private and public life, and fragments of codes from this early period have been discovered.[6] However, until Hammurabi, who ruled from 1795-1750 BCE, there was no code in a language broadly understood by the people of the region.[7] In addition to codification of the statutes, Hammurabi took the step of having them carved on a stone monument and, thus, publicly displayed. The discovery of one of these monuments in the early part of the 20th century CE led scholars of the time to an understanding of the influence of the Mesopotamian civilization on surrounding regions and later settlements.[8] The idea that laws should be clearly defined and known to the whole population can be said to have begun with the Code of Hammurabi;[9] it remains an important part of the legal heritage of the region.

The Code itself consisted of 282 provisions, following a preamble thanking the gods and praising Hammurabi. The legal system it outlined established a society divided into classes, with complex social relations and harsh punishments.[10] It reflected a long experience with legal proceedings and the problems they could entail, including the issues that could arise from false accusations, which were dealt with in the first few articles. Anyone who brought an accusation of a capital crime without proof could be put to death (article 3). There was a belief in the efficacy of an ordeal for determining the truth. When an accusation was made, the accused might leap into the river; if he sank, the accusation was considered to be true, and the accuser would take possession of the accused's house. If however the accused did not sink, he was considered not guilty. The accuser would be put to death, and the accused would in turn receive his house (article 2).

Experience with the ups and downs of legal proceedings also showed in article 5, on judges, which required that if a judge had made an error in a decision presented in writing that had imposed a fine, then he must pay twelve times the amount in question, in addition to being removed from the bench.

The Code covered all aspects of law, reflecting the society of its time, including marriage and family relations, property, robbery and other crimes, minimum daily wage, purchase and sale of slaves and owner obligations to slaves, and even the fees charged by doctors, lawyers, and accountants.

Hammurabi believed in capital punishment and made all the serious crimes punishable by death. Builders who did a poor job were subject to the death penalty if a house they built fell and killed the owner; if it was the son of the owner who was killed, the builder's son was executed (articles 229-230). The Code established the "an eye for an eye" standard, with no extenuating circumstances foreseen.

---

[5] Claude Hermann Walter Johns, *Babylonian Law–The Code of Hammurabi,* ENCYCLOPEDIA BRITANNICA 11th ed. (1910-1911), *available at* http://www.fordham.edu/halsall/ancient/hamcode.html.

[6] William Muss-Arnolt, *Some Babylonian Laws*, *in* ASSYRIAN AND BABYLONIAN LITERATURE: SELECTED TRANSACTIONS, WITH A CRITICAL INTRODUCTION 445-447 (1904), *available at* http://www.fordham.edu/halsall/ancient/2550mesolaws.html.

[7] Morris Jastrow, *Older and Later Elements in the Code of Hammuapi*, 36 JOURNAL OF THE AMERICAN ORIENTAL SOCIETY 1-33, 2 (1916).

[8] See for example STANLEY A. COOK, THE LAWS OF MOSES AND THE CODE OF HAMMURABI (1903).

[9] Translation into English by L. W. King available on many websites including that of Fordham University, *supra* note 5 *and Hammurabi's Code of Laws,* EXPLORING ANCIENT WORLDS, *at* http://eawc.evansville.edu/anthology/hammurabi.htm..

[10] Charles F Horne, *The Code of Hammurabi: Introduction*, ANCIENT HISTORY SOURCEBOOK, *at* http://www.fordham.edu/halsall/ancient/hamcode.html.

### C. Kassite Dynasty Legal Documents (16th-12th centuries BCE)

Hammurabi's dynasty came to an end when the Hittites invaded from Turkey, around 1600 BCE. After vanquishing the Babylonian empire, the newcomers adopted the laws and culture of the region. Because their empire was extensive, including Palestine and Syria, as well as Mesopotamia, and because they traded with all the peoples of the Mediterranean, they spread the Mesopotamian traditions, including the legal heritage, throughout the region. However, they were soon supplanted in the central part of Mesopotamia, including the city of Babylon, by the Kassites, who renamed the city and built a new capital city, called Durkurigalzu. The Kassites dominated the immediate area from 1530 to1170 BCE. While very little is known about their origins,[11] some legal texts from the Kassite period have been discovered.[12]

The largest number of the Kassite legal writings that have been found are documents of purchase, including the purchase of slaves, as well as cattle, and of disputes related to purchases. From the documents it can be learned that most transactions were done with cash, though some credit purchases occurred. The contracts of sale were very complete, including information on what was sold, what price was paid, and whether any of the cost was paid in goods in lieu of cash; they also included a list of witnesses, the date and a seal, and a renunciation of future claims.[13]

There were also documents describing settlements of disputes and payment of bail. While some of the dispute settlements were court orders, others were more in the nature of mediated dispute settlements, sometimes arranged by the city prefect, a priest, an official, or the king. As an alternative to a judgement or following a judgement, an aggrieved party, such as a person sold inferior goods, could have imprisoned the alleged culprit in his house. A third party could then have come forward to act as guarantor and could have had the detainee released. This guarantor then frequently assumed responsibilities for the offender. Whereas in earlier times a guarantee was a promise to present the offender at a later proceeding, in this period a guarantee could be a promise of payment. The legal system had developed more complexity in handling business disputes. The practice of the river ordeal, established in Hammurabi's day as a means of determining innocence, continued.[14] The documents of this era thus show the continuation of some aspects of the Mesopotamian legal culture and other developments.

### D. Assyrian Conquest (12th-9th century BCE)

A later upheaval in the history of the region was the Assyrian conquest of Babylon.[15] The Assyrians, a Semitic people that had lived in northern Mesopotamia for a long time without dominating others, began to expand their authority with the conquest of Syria and Armenia in the 12th century BCE. By the 9th century, Assyrian monarchs had consolidated rule over Palestine, Babylon, and southern Mesopotamia as well. At the time of its greatest extension, the Assyrian realm stretched from Lebanon to the northwestern Iranian mountains.

---

[11] Richard Hooker, *The Kassites*, MESOPOTAMIA, *at* http://www.wsu.edu/~ dee/MESO/KASSITES.htm.

[12] O.R. GURNEY, THE MIDDLE BABYLONIAN LEGAL AND ECONOMIC TEXTS FROM UR (1983).

[13] *Id.* at 4-5.

[14] *Id.* at 9-10.

[15] *The Assyrians, supra* note 10, *at* http://www.wsu.edu:8080/~ dee/MESO/ASSYRIA.htm

To maintain their power over a diverse empire of peoples with different languages and cultures, they instituted a policy of forcing people to migrate to other areas under their control. The policy brought the peoples of the region into close contact, creating a cultural mixing bowl and spreading legal culture along with other institutions. King Nebuchadnezzar, who reigned from 604-562 BCE, continued the policy of moving groups of people from one part of the empire to another by capturing Jerusalem and bringing back 7,000 Jewish captives to Babylon as slaves.[16]

The Assyrians are considered by some to have changed family law practices in Mesopotamia, instituting rules that were more restrictive to women than those that had been in place. In comparison with Hammurabi's day, the husbands and fathers had more authority over their families. Men could punish their wives by twisting their ears or pulling out their hair. In addition, while it was traditional for wives and children to be used as debt pawns, sent to work for the family's creditors, the previous laws limiting the time they could be held and prohibiting their physical abuse while in that status were dropped under the Assyrian rule. Women also had more difficulty getting divorces, and no longer were their spouses required to return the dowries of women they divorced. Women of the upper classes had to wear veils, while other women could be penalized for donning them. However, women did enjoy the rights to own and inherit property.[17]

### E. Other Conquerors (from the 6th century BCE)

The Assyrian empire declined in power, and Babylon was captured by Cyrus of Persia (today known as Iran) in 539 BCE. His empire eventually was even larger than the Assyrian one had been, reaching from Egypt to the western border of India. The Jews enslaved by Nebuchadnezzar were allowed to return to their homeland. The Persian rule lasted until Alexander the Great conquered Mesopotamia in 333 BCE. Upon Alexander's death, the country was given to one of his generals, Seleucus, to rule, and later the region became a battleground for various powers, including the Persians, Romans, and Greeks.

The formerly great cities of Mesopotamia were deserted.[18] The successive invasions brought cultural and social change, which had reflections in the legal system. For example, it has been argued that women's legal status declined further after the Persian conquest, when they were no longer able to serve as witnesses and were restricted in their participation in legal transactions.[19]

## II. Advent of Islam

### A. Early Arab Era (7th century CE)

Mesopotamia became al-Iraq in the 7th century CE, when the Persian army was defeated by Arab forces; the region later came under the control of the caliph in Damascus. Along with the Arab army came a language, a religion, a culture, and a new set of laws. The warriors who operated under religious

---

[16] *Id.*

[17] Sue Rowland, *Veiling in the Assyrian Empire*, *at* http://members.aol.com/peterow/p6meso2.htm; LEILA AHMED, WOMEN AND GENDER IN ISLAM: HISTORICAL ROOTS OF A MODERN DEBATE 13-17 (1992).

[18] SPENCER, *supra* note 1, at 27-29.

[19] AHMED, *supra* note 17.

laws treated the civilian population with respect. The regulations prohibited rape and the killing of non-combatants.[20] Arabs migrated to the area to settle, bringing Islam with them, but the official policy was one of tolerance of all "peoples of the book," that is Jews, Christians, and Zoroastrians. These communities were exempted from military service, though required to pay taxes and to be under the caliph's ultimate authority. They were allowed to manage their own affairs in everyday life. The caliphate ruled a vast empire, from Morocco and the Iberian peninsula, through North Africa, Arabia, the Middle East and Persia, and north to Armenia.[21]

While the rule of the caliphs held the large, diverse region together, Islam, which spread throughout the territory, was generally a source of unity. From the late 7th century, however, the Islamic world experienced a split over the question of who should be considered the ultimate leader, after the death of the founder, Mohammed. This split has continued to the present day, with the Sunni Muslims representing the descendants of the majority and the Shia Muslims being the descendants of those who disagreed with the succession. The conflict between these two groups has been important for Iraq, with early Shia settlements in the country. Of the Islamic population of Iraq today, approximately fifty-five percent consider themselves Shia. In nearby Iran, the percentage is about ninety-five. There have been separate traditions of Islamic legal scholarship associated with each group.[22]

### B. Abbasid Caliphs (8th-13th century CE)

In the 8th century, there was a revolt against the rule of the caliphs in Damascus, due in part to resentment of the superior attitude of the Arab caliphs and in part to rallying the support of the Shiites, who joined with dissatisfied Sunni Muslims in the rebellion. The leaders that took control were called Abbasids, after Mohammed's uncle. They made Iraq and its newly built capital city Baghdad the center of a flourishing civilization, with extensive trading links throughout the Mediterranean and east via the Silk Road to China and India. The Abbasid rulers, during their five centuries in control, patronized science, literature, architecture, and calligraphy. They established schools, libraries, hospitals, and asylums for the mentally ill and were reported to have had a system of support for the indigent and a well-run police force.[23] The study of law was considered a n important part of the field of theology and greatly developed during the Abbasid period. One of the four major schools of legal theory in the Sunni tradition, the Hanafi school, was founded in the Baghdad in the early part of this era of Iraq's history.[24]

Over time, the caliph's position weakened through internal strife, and by the middle of the 11th century, power was held by the army, dominated by Turks and Central Asian warriors. In the 13th century, the Mongols invaded from the East, entering Bagdad in 1258, destroying the irrigation system and killing thousands, including the last Abbasid caliph. This invasion, together with the supplanting of the Silk Road by maritime trading routes, marked the end of Baghdad's role as the center of Islamic

---

[20] *The Arab Conquest and the Coming of Islam*, IRAQ HISTORY, *at* http://arabic-media.com/iraq_history.htm.

[21] SPENCER, *supra* note 1, at 38.

[22] *Id.* at 39-40.

[23] Reported by a traveler *quoted in Baghdad In the Time of Harun Al-Raschid*, MEDIEVAL HISTORY, *at* http://historymedren.about.com/.

[24] Bogac Ergene, *Sources and Schools of Islamic Law*, http://college.hmco.com/currentconflict/students/history/islamic_activities/islamic_law; ENCYCLOPAEDIA BRITANNICA EDITORS, THE ARABS: PEOPLE AND POWER 85-86 (1978).

civilization.[25] After 1335, when the last strong Mongol khan, Abu Said, died, there was a period of instability, and then a local dynasty, the Jalayirids, came to power. They ruled until a second destructive wave of invasion came under Tamerlane, who led an invasion of Iraq from the east in the late 14th century and took Baghdad in 1401.[26]

### C. Ottoman Empire (14th -20th centuries CE)

Turkish forces defeated the Byzantines in 1326, establishing the Ottoman Empire in Anatolia (present day Turkey). In 1453, led by Mehmed the Conqueror, they captured Constantinople, which was renamed Istanbul. The empire eventually expanded into Eastern Europe, North Africa, Egypt, the Middle East, Iraq, and the region of Central Asia northwest to the Caspian Sea. They created an integrated administration designed to be socially, economically, and politically centralized. The Ottomans' state was a military theocracy, with the Sultan exercising complete, personal power through a large bureaucracy. In fact, in order to insure that only one of his descendants could be seen as the true ruler representing divine authority, Mehmed legalized fratricide in the royal family, stating that for "the welfare of the state, the one of my sons to whom God grants the Sultanate may lawfully put his brothers to death. This has the approval of a majority of jurists."[27]

The government of the Ottomans was divided into four parts, called the four "pillars of the empire," meant to represent the four poles of a tent as well as the four angels that in the Qu'ran support the throne, based on the four companions of the Prophet who became the first four caliphs. The first pillar was the Grand Vezir, the Sultan's equivalent of a Chief of Staff or Cabinet head. Additional pillars consisted of the accountants and treasurers; the chancellors, who drew up the Sultan's edicts, and the military commander; and the judges, responsible for the administration of justice. These judges included two judges of the army who were responsible for nominating other judges.[28]

This system of administration, which encompassed also the legislative and judicial functions of government, was codified in a book of laws and regulations drawn up during the last years of Mehmed's reign. In addition to administrative rules and court rituals, the code, called the *Kanun*, included criminal law. Mehmed divided the regulations into two parts, one concerning the organization of the government and the military and the other with taxation and treatment of the citizens. It included decisions made to deal with situations not covered in the *sharia* law, the law derived from the Qu'ran. Sultans could not change *sharia* law, but in the Hanafi legal tradition, the dominant school of jurisprudence under the Ottomans, cases that fell outside of the scope of *sharia* would be settled by a judgement or ruling based on analogy. As the government grew in geographic scope and in complexity, the code gradually came to reflect Turkish practice in addition to Islamic law per se. The Ottoman legal system was thus a hybrid of Islamic and other traditions.[29] The state laws decreed by the Sultans were regarded, however, as

---

[25] SPENCER, *supra* note 1, at 47.

[26] *Cradle of Civilization, supra* note 4, at 11-12.

[27] *Quoted in* PATRICK BALFOUR KINROSS, THE OTTOMAN CENTURIES: THE RISE AND FALL OF THE TURKISH EMPIRE 139 (1977).

[28] *Id.* at 140.

[29] *Suleyman (1494-1566)*, JEWISH VIRTUAL LIBRARY, *at* http://www.us-israel.org/jsource/biography/Sulyeman.html.

subordinate to the *sharia* law,[30] and important steps taken by the Sultan in theory had to be approved in advance in an opinion by the leading Islamic legal authority of the day.[31]

In 1520, Suleiman became the Sultan. He is considered one of the preeminent rulers of all time, successful militarily, but known as "the Magnificent" for his sponsorship of learning and the arts, in particular architecture. He was also known as Suleiman the Lawgiver or *Kanuni* for the value he placed on justice. Under his leadership, Mullah Ibrahim of Aleppo prepared a revision of the laws established under Mehmed to bring them up to date. They became the *Multieka-ul-ubhar*, the Confluence of the Seas, and remained essentially the same thereafter until the 19th century. His changes simplified and codified customs and practices, building on both the existing administrative rules and on Islamic law. Suleiman was known as a devout man and did not challenge the supremacy of *sharia* law established under Mehmed. He was considered a defender of the faith, and as such he carried out religious law.[32]

In the purely administrative regulations however, Suleiman took care that the provincial governors treated the non-Muslim subjects of the empire impartially. Under this administration, the Christian peasants, known as *rayas,* who farmed the landed estates of the upper classes could count on better treatment than the European serfs under Christian rule at the time, and some migrated to Ottoman territory to take advantage of it. Suleiman's Code of the *Rayas* regulated how much they were charged in tithes and taxes, giving them assurance that they would not be subject to unpredictable levies.[33]

In the area of criminal law as well, Suleiman instituted reforms, issuing laws on offenses against morals, on violence and injuries, and on theft.[34] Fines replaced physical punishments like mutilation or the death penalty for some crimes, although bearing false witness, forgery, or circulating counterfeit money was still sometimes punished with the severing of a hand.[35] Suleiman also issued commercial regulations, to regulate prices, the markets, and trade guilds. He limited interest rates to eleven percent and created rules for the preparation and sale of foodstuffs.[36]

### D. Iraq Under Ottoman and Safavid Rule (15th-19th centuries CE)

Iraq was ruled by the Ottomans in three provinces, centered on Basra, Baghdad, and Mosul. Power in these provinces was concentrated in the military rulers, the *mamluk* pashas, who gradually operated with some independence from the Ottoman sultan, their sovereign.[37]

From the 16th to the 20th centuries, Iraq was caught between two powerful empires, the Ottomans,

---

[30] The traditional primary sources of Islamic or *sharia* law are the Qu'ran, the *Sunna* (customs), and the sayings of the first four caliphs (See section II (??) for an fuller discussion.)

[31] KINROSS, *supra* note 27, at 140-142.

[32] *Id.* at 205-211; *supra* note 23.

[33] *Id.* at 207.

[34] *Id.* at 210.

[35] Sanderson Beck, *Africa and the Middle East 1300-1615*, *at* http://www.san.beck.org/AC4-MidEastAfrica.html.

[36] KINROSS, *supra* note 27, at 210.

[37] CHARLES TRIPP, A HISTORY OF IRAQ 8-13 (2000).

who ruled from Istanbul, and the Safavids, whose empire was in Iran.[38] Not only was Iraq between two large political power centers, it was also on the front line of a religious divide. The Ottoman Turks were Sunni Muslims, but the Safavids declared Shia Islam to be their official religion in 1501, and several key Shia holy sites are located in Iraq. When the Safavids occupied Baghdad in 1509,[39] Iraq came under their control, and the Sunni Muslims in the population were persecuted by the Iranian shah. That persecution and the support the shah gave to uprisings against the Ottoman empire in Shia areas of eastern Turkey pushed the sultan to respond; the Ottoman army regained control of Iraq in 1514.[40]

After that time, control of the country remained with the Ottomans, but the Safavids at times had influence in parts of the region. During periods of stronger Safavid influence, many Shia Muslims migrated to the region, and they became a majority of the Iraqi population.[41] Each side mobilized support based on religious allegiance. Thus, in the same period when Suleiman reformed the legal system and developed Ottoman traditions of administrative practice, Iraq experienced an increasing internal religious division.[42]

The Safavids reconquered Baghdad in 1623 under Shah Abbas, but were expelled again by the forces of Sultan Murad IV.[43] In 1639, the Treaty of Qasr-i Shirin formally declared the region to be a part of the Ottoman Empire, in theory ending over a hundred years of conflict and establishing a lasting boundary with the Safavids. Istanbul's authority continued to be challenged in various parts of Iraq by tribal uprisings, and the Iranians regained some influence into southern Iraq.[44] The effective authority of the Ottoman sultanate was frequently limited to the cities.[45]

In the 18th century, the pashas in Baghdad and some of those in Basra were Georgian, born in Christian families and taken as youths and converted to Islam. To stay in power, however, they had to make alliances with a number of Arab tribal confederations. The pashas instituted a tributary system, taxing rural communities and tribal leaders as well as imposing tariffs on goods in transit through the region. While nominally acknowledging Ottoman sovereignty, the pashas held officials sent by the sultans to subordinate staff positions, and tribute funds were sent on to the empire irregularly. They did however use Ottoman administrative practices to rule their territories. The northern Ottoman province of Mosul was effectively ruled by a local dynasty, the Jalili, and there were semi-independent areas in the Kurdish settlements.[46]

---

[38] *Iraq - The Ottoman Period, 1534-1918*, *at* http://reference.allrefer.com/country-guide-study/iraq/iraq14.html.

[39] *Id.*

[40] SPENCER, *supra* note 1, at 51.

[41] *Id.*, at 49-52.

[42] TRIPP, *supra* note 37.

[43] *Id.*

[44] Also called the Treaty of Zuhab. *The Local Despotisms in the 17th Century*, IRAQ'S HISTORY PAGE, *at* http://www.angelfire.com/nt/Gilgamesh/17th.html.

[45] SPENCER, *supra* note 1, at 53.

[46] TRIPP, *supra* note 37, at 9-10.

### E. Reform in the Ottoman Empire (mid 19th century CE)

By the 19th century, Ottoman power had declined throughout the empire. Russian forces had expanded their territory by moving south into regions formerly under Ottoman control, and the Greeks and the Serbs had won independence with British assistance. The sultan's realm was considered the "sick man of Europe."[47]

Concerns about territorial encroachments added to the problem of growing independence of the provincial rulers within the empire, notably the autonomy of Egypt.[48] These concerns prompted reformers to propose changes based on European models of law and administration. Known as *tanzimat*, which means "reorganization" in Turkish, the reform program initially faced considerable opposition from conservative parties, but was undertaken by Sultan Abdülmecid I and fully developed under Mahmud II.[49]

The program was established through the Noble Edict of the Rose Chamber, issued in 1839, and proclaimed before an audience that included foreign diplomats, as well as Turkish officials.[50] Its main points were new regulations covering administration, taxation, the conscript system, the rights of the individual, and the educational system.[51] A key provision guaranteed the equality of all subjects, regardless of religion, in taxation, military service obligations, eligibility for civil service jobs, and entrance to institutions of higher education run by the state.[52] In addition, every citizen was guaranteed security of life, property, and honor within the empire. Secular schools were established.[53]

Under the reform program, provisional representative assemblies were set up that together with the judicial system were to provide civil rule, independent of control by religious authorities. These local governments began to function as parts of a larger state structure. Abuses in the tax system that had allowed local governors to become rich were corrected, and regulation of the military conscription system was improved, based on Prussian methods.[54] New ministries were established, including a Ministry of Education and a Council of Justice, to oversee the developing legal system.[55]

The reforms established the principle of fair public trials under law and no punishment without a legal sentence. The Council of Justice was expanded and given quasi legislative powers. Also, the Sultan could not abrogate laws under this charter, so for the first time there was a legal limit on the

---

[47] SPENCER, *supra* note 1, at 53.

[48] *Tanzimat*, ENCYCLOPEDIA OF THE ORIENT, http://i-cias.com/e.o/tanzimat.htm.

[49] *Id*.

[50] KINROSS, *supra* note 27, at 474.

[51] *Hatt-i Serif,* ENCYCLOPEDIA OF THE ORIENT, *supra* note 48, at 2.

[52] SPENCER, *supra* note 1, at 53.

[53] KINROSS, *supra* note 27, at 474.

[54] *Id*.

[55] SPENCER, *supra* note 1, at 54.

absolute power of the Ottoman monarch. However, the Council was an appointed, not an elected body.[56]

A number of laws were introduced based on European examples, including a Penal Code in 1858, modeled on the French Penal Code, a Commercial Procedures Law of 1861, a Civil Code of 1876, and the Criminal Procedures Law of 1979.[57] Among the laws enacted under this new system that had the most impact on Iraq were the Land Law of 1858 and the Vilayet[58] Law of 1864. The land reform changed the system of land tenure, giving farmers more security, but reestablishing ultimate state authority over the land. The plan was to encourage productivity in agriculture and create income for the empire. The Vilayet Law reorganized the administration of the provinces, defining their boundaries more clearly and outlining the nature of central authority over them. The responsibilities of provincial governors and their subordinates were explicitly defined.[59]

### F. Midhat Pasha and Tanzimat in Iraq (mid 19th century CE)

By the beginning of the 19th century, Ottoman control of Iraq was at a weak point, with the provincial governors operating with a great deal of independence and with large areas effectively ruled directly by tribal sheiks. One governor had tried to modernize his realm, instituting programs to clear the canals; starting new industries, including a printing press; and training a large army.[60] His efforts to reform the administration of Iraq ended with the disaster of 1831, when a combination of a flood and a plague devastated the city of Baghdad.[61]

Ottoman rule in Iraq was consolidated again in 1869. From that date, the new governor, Midhat Pasha, worked to implement the *tanzimat* reform program from Baghdad, with the aim of modernizing Iraq on the European model. Carrying out the program as drawn up in Istanbul several decades before, together with the laws on land tenure and the *vilayet* system, he reorganized the military, created secular schools, and improved local administration. A provincial representative assembly was set up, and elections were held for municipal councils in the major cities.[62]

The strengthened local administration changed the relationship between the tribal leaders and the state officials, moving the balance of power more toward the central authorities. In addition, the land reform, by changing the feudal system of land holdings and instituting legally sanctioned property rights, altered the relationship between the tribal sheiks and their tribesmen.[63] The Land Law did not recognize communal ownership of land, allowing registration of land rights only in the names of individuals.

---

[56] KINROSS, *supra* note 27, at 474..

[57] Sabah Al Mukhtar, *The Rule of Law in Iraq: Does It Exist? in* THE RULE OF LAW IN THE MIDDLE EAST AND THE ISLAMIC WORLD 75 (Eugene Cotran & Mai Yamani eds., 2000).

[58] *Vilayet* is a Turkish term used for administrative divisions in the Ottoman Empire.

[59] TRIPP, *supra* note 37, at 15.

[60] His name was Daud and he was in power from 1816-1831, *Iraq–the Ottoman Period, supra* note 38, at 6.

[61] *Id.*

[62] *Id.* at 7.

[63] *Id.* at 8-9

Tribes, therefore, registered communally owned tribal lands in the names of their chiefs, who thereby became large-scale landowners. The tribesmen became tenant farmers with their chiefs as landlords. The chiefs thus had a stake in the government, which had been viewed merely as a force that demanded taxes, because it could enforce their new rights to the land. Sheiks that had been powerful because of their personal authority within their tribes became important instead as landowners.[64] The imposition of a law considered to be a modern reform, establishing land rights modeled on those in European laws, had a profound effect on society in portions of Iraq.

Midhat Pasha was so successful that the regime in Istanbul became concerned about his power and independence; he was recalled to Istanbul in 1872.[65] The implementation of the reform legislation, advanced in the area around Baghdad, had not been completed throughout Iraq.[66]

## III. Modern Iraq

### A. Early 20th Century Developments (1908-1918 CE)

By 1908, a second wave of modernization-minded leaders had become influential in Istanbul. Known as the "Young Turks," they pushed for the re-introduction of the earlier legal reforms, as well as a "Turkification" policy that was unpopular with educated Iraqis.[67] At that time leaders emerged in a lively political scene in Baghdad who were products of the secular schools established under Midhat Pasha. They were eager to move the region forward and discussed the importance of constitutionalism and secularism. They advocated the de-centralization of power in the empire and the need to give the Arabic language the same status as Turkish.[68]

World War I played a key role in the development of the entire Middle East. The Ottoman empire had allied with Germany against the victorious Britain, France, and Russia. Iraq became a battleground, along with other provinces of the empire. Britain sought to control the region and landed an invading army at Basra in 1914, but was forced to surrender before reaching Baghdad. They did not control the three provinces of Basra, Baghdad, and Mosul until 1918.[69]

In addition to attempting to take control of Iraq by force, Britain made secret agreements with France to divide up Ottoman holdings.[70] One of them, the Sykes-Picot Agreement,[71] gave France control of what is now Syria and Lebanon, while the British gained Iraq and the area of modern day Jordan and Israel. While this agreement was concluded in secret, British intelligence agents were working with Arab leaders in Egypt and the Arabian peninsula to encourage a revolt against Istanbul's rule, giving those

---

[64] TRIPP, *supra* note 37, at 16-17.

[65] KINROSS, *supra* note 27, at 507-508.

[66] TRIPP, *supra* note 37, at 16, 18.

[67] IRAQ HISTORY, *supra* note 20, at 14.

[68] *Id.* at 22-24.

[69] TRIPP, *supra* note 37, at 31.

[70] SPENCER, *supra* note 1, at 54-56.

[71] Concluded in 1916. Text *available at* http://www.yale.edu/lawweb/avalon/mideast/sykes.htm, *inter alia.*

leaders the understanding that after the war there would be an independent Arab state.

In a separate, also secret agreement with Jewish leaders, Britain arranged to establish a Jewish homeland in some of the same territory. When the peace settlement was reached in 1918, the secret agreements came to light, and the Arab leaders discovered to their disappointment that their nations were divided between European powers, to be administered as mandates, with the promise of eventual independence.[72]

### B. British Mandate (1920-1932CE)

The first high commissioner for Iraq was Sir Percy Cox, but he spent time serving in Persia from April 1918 to October 1920, leaving a less experienced deputy, Arnold Talbot Wilson, in charge of administering Iraq. The issues facing the administration were numerous, including the conflicts between villagers and tribes; the need of merchants and other businessmen for an effective legal system, with laws to protect their interests and courts to enforce the laws; the desire of landlords to have land grants; and the requests from city officials for their powers to be defined and for the establishment of public health and educational institutions.

Some regions of the country were experiencing anarchy, with violent conflicts between tribes, and British governance was not yet established in the mountainous Kurdish region. Wilson attempted to rule Iraq as a colony, the way Britain had ruled India, and even brought in Indian bureaucrats to fill subordinate administrative positions, rather than hiring Iraqis.[73]

The British abolished some of the institutions established during the Ottoman reform efforts, including the elected municipal councils, working instead through local leaders they trusted to maintain order in the countryside. They introduced a Tribal Civil and Criminal Disputes Regulation, modeled after a similar law in India, to give certain selected sheiks the authority to settle all disputes within their tribes and to collect taxes for the government. In addition, money flowed to the sheiks through government projects and land grants.[74] Throughout the period of the mandate and the monarchy that followed, they operated as an important buttress to the political establishment. It has been argued that by taking these steps, which changed the power structure of the tribes in the country, it appeared that the British were preparing to control Iraq as a true unit of the British Empire, rather than as a mandate region preparing for independence.[75] In addition, a Baghdad Penal Code was introduced in 1918 and a Companies Law the next year. Despite the British leadership, Iraq did not become a common law country, staying instead a civil law jurisdiction.[76]

Dissatisfaction with the mandate situation and with the manner it was being administered led to the formation of three secret, nationalist societies. There were small rebellions even before Iraq officially

---

[72] IRAQ HISTORY, *supra* note 20, at 14. MARK LEWIS, *Historical Setting*, IRAQ: A COUNTRY STUDY 32 (1990).

[73] LEWIS, *id*. at 32-33.

[74] ENCYCLOPEDIA OF WORLD HISTORY, *at* http://www.bartleby.com/67/2401.html.

[75] The Tribal Civil and Criminal Disputes Regulation became part of codified law in Iraq in 1924, TRIPP, *supra* note 37, at 37.

[76] Al Mukhtar, *supra* note 57, at 75.

became a "Class A mandate" of Great Britain on April 25, 1920.[77] Once the news spread that the mandate was to go into effect, nationalist activities increased. One religious leader issued a ruling (a *fatwa)* arguing that it was against Islamic law for non-Muslims to rule a nation of Muslims and called for a *jihad*.[78] The revolt that followed lasted for three months and resulted in the loss of the lives of about 6,000 Iraqis and 500 British and Indian soldiers.[79] Order was eventually restored by the British, but the rebellion had brought together different religious and ethnic groups, as well as city dwellers and tribal peoples. It, therefore, is seen as a first stage in the creation of an modern, Iraqi national identity.[80]

However, the split between the various groups in Iraqi society was far from resolved, and actions taken during the mandate years exacerbated the problem. When Britain established its mandate, the population was split administratively into three provinces. The British consolidated the provinces of Mosul, with its Kurdish population, Basra, and Baghdad into one unit. In addition, in a country with over fifty percent Shia Muslims, twenty percent Kurds, and about eight percent Jews, Christians, Muslims of Turkish descent, and other groups, the British gradually established a governing elite of state officials and officers that were almost entirely Sunni in religion and Arab in ethnicity, to replace the imported Indian administrators. These societal divisions remain a consideration in the development of a unified Iraq even today.[81]

In November 1920, a government was formed with a central Council of Ministers functioning under British oversight. The Council included twenty-one prominent Iraqis, drawn from all three Ottoman provinces, and while it included several Shia Muslims, Christians, and Jews, it was dominated by Sunni Arabs. The municipal councils were eventually restored, and the British began handing over local administration to Iraqi officials, assisted by British advisors.[82]

The government established in the mandate was modeled on that of Great Britain, which meant a constitutional monarchy, with a parliament, as well as a king, that the various factions in the country would accept.[83] The British chose Prince Faisal bni Hussein, a member of an influential family in the Arab world and one of Britain's wartime Arabian allies, but not an Iraqi, to be the first monarch.[84] The choice was made at the Cairo Conference in March 1921, and in June the Council of Ministers formally declared him the King. Soon thereafter a plebiscite, considered now to have been rigged, was held that appeared to give him a ninety-six percent approval rate.[85]

The territorial limits of the new state were not yet set, particularly with respect to the Turkish

---

[77] LEWIS, *supra* note 72, at 34.

[78] *Id.*

[79] TRIPP, *supra* note 37, at 44.

[80] LEWIS, *supra* note 72, at 34.

[81] TRIPP, *supra* note 37, at 31; LEWIS, *supra* note 72, at 35.

[82] TRIPP, *id.* at 45.

[83] SPENCER, *supra* note 1, at 59.

[84] LEWIS, *supra* note 72, at 35.

[85] TRIPP, *supra* note 37, at 47-48; LEWIS, *supra* note 72, at 35.

border area, with its Kurdish population. The British took special steps to incorporate Kurdish citizens. The Kurdish language was introduced as the official written language of the Kurdish areas in the Mosul province, in place of the Turkish that had been used in government offices.[86] In addition, under the August 20, 1920, Treaty of Sévres, a separate nation of Kurdistan was planned, which Kurds living in the Mosul area could choose to join.[87]

The July 24, 1923, Treaty of Lausanne, however, did not mention any separate Kurdish state, specifying that if Turkey and Iraq did not agree on a border in nine months, the League of Nations would resolve the issue. The Kurdish areas that had formed part of the Mosul province of the Ottoman empire were awarded to Iraq by the League, with the provisos that Kurds be given positions as administrators, judges, and teachers in their homeland and that the Kurdish language be seen as official.[88]

Early efforts to support Kurdish identity and language use were not always maintained. In February 1929, Kurdish deputies in the Iraqi Chamber sent a petition to the Prime Minister stating that the League of Nations recommendations for the Kurds were not being followed and requesting that more money be spent on education.[89] When Britain announced the decision to end the mandate status for Iraq, complaints were sent by Kurdish leaders that their national rights were being denied and asking for autonomy or a fully independent Kurdish nation. In response, and to avoid further calls for independence, Iraqi and British officials drafted a Language Law, which was designed to safeguard the use of the Kurdish language. In addition, the draft declaration on the Iraqi government submitted when Iraq joined the League of Nations stated in article 9 that in the relevant local jurisdictions "the official language, side by side with Arabic, shall be Kurdish." It also specified that in locales where a considerable proportion of the population is Turkish speaking, that language could also be considered official.[90]

The parameters of the Iraqi government under the mandate were eventually outlined in a 1925 Organic Law, together with an Anglo-Iraqi Protectorate Treaty concluded in October 1922[91] that confirmed that for the next 20 years, Iraq would follow British advice in matters related to British interests. This was to include fiscal policy, since Iraq was in debt to Great Britain.[92] In April 1923, a protocol was signed that modified the effective period of this treaty, reducing it to four years. The Constituent Assembly, elected under a May 1922 Electoral Law, met for the first time in March 1924.[93]

In addition to ratifying the Protectorate Treaty by a very narrow margin, the Assembly passed the Organic Law, a constitutional document. The King signed it March 21, 1925, and it went into force right

---

[86] *British Occupation and Mandate, at* http://www.cogsci.ed.ac.uk/siamakr/Kurdish/KURDICA/1999/FEB/iraq-policy.html.

[87] Treaty of Sévres, Aug. 10. 1920, Allied Powers-Turk., arts. 62-64, 28 L.N.T.S. 244, *available at* http://www.lib.byu.edu/~ rdh/wwi/versa/sevres1.html.

[88] LEWIS, *supra* note 72; Treaty of Lausanne, July 24, 1923, Allied Powers-Turk., 28 L.N.T.S.12, *available at* http://www.lib.byu.edu/~ rdh/wwi/1918p/lausanne.html.

[89] *British Occupation and Mandate, supra* note 86.

[90] *Id.* quoting from 1932 LEAGUE OF NATIONS OFFICIAL JOURNAL 1347-1350 (July 1932).

[91] Protectorate Treaty, Oct. 10, 1922, U.K.-Turk., 35 L.N.T.S. 14, *available at* ENCYCLOPEDIA OF THE ORIENT, *supra* note 48, http://i-cias.com/e.o/angl_tr_iraq1.htm.

[92] LEWIS, *supra* note 72, at 36 (LC).

[93] *Id.* at 37. Protocol at *supra* note 91.

away.[94] This Law established that the government of Iraq consisted of a representative system and a hereditary constitutional monarchy. Much of the discussion before its passage centered on how much of a ruling role the monarch would have. In the final version, the King was given a great deal of power, including the rights to confirm all the laws, to call for general elections, to discontinue a session of the Parliament or dissolve it, and to issue ordinances needed to fulfil treaty obligations without consulting Parliament and when Parliament was not in session. The King also selected the Prime Minister and appointed the other ministers based on the Prime Minister's recommendations.[95]

The Parliament outlined in the Organic Law was divided into two chambers, a Senate appointed by the King and an elected Chamber of Deputies. The deputies were elected every four years, with free manhood suffrage[96] under an indirect voting system. Every 250 primary voters selected one secondary elector who in turn elected the deputy. It was a British-style Parliamentary system, in that the cabinet was responsible to the chamber of deputies and could be forced to resign by a vote of no confidence. Legislation could be proposed by any deputy, with the support of at least ten others. However, the Parliament could not enact legislation on financial matters, as the British retained control over finances, under the Treaty.[97] Since King Faisal was greatly influenced by his British sponsors, this Organic Law gave the British a great deal of indirect power in the country.[98] In all ten general elections were held under the constitutional monarchy, in the years from 1925 to 1958. In the same years there were 50 Cabinets, as frequent changes of government were the result of the political instability of the country.[99]

In 1925, the first elections were held for the Parliament, resulting in a legislature in which once again the tribal, landed portion of the population dominated. The members began work on a number of laws needed for the new state and ratified an oil concession agreement with the Turkish Petroleum Company that had been concluded in March 1925.[100]

The controversy over the enactment of a law on conscription reflected the lines of conflict that persisted in Iraqi society, even after the establishment of the Parliament, and the impact those conflicts continued to have on the legal system. The military officers who believed in a strong army felt that conscription was a necessity. Iraq was to assume responsibility for its own defense beginning in 1928. Conscription seemed to be the most affordable option for Iraq to show its ability to defend itself by establishing a large army. In addition, a strong centralized military seemed to be needed to control the Kurdish and tribal strongholds, and it was further hoped the experience of universal military service would help foster a sense of loyalty to the new state. On the other hand, the Kurds and the Shiite tribesmen opposed conscription, seeing it as a continuation of the Ottoman traditions of control. The British feared that the issue would be so divisive that they might be called upon to suppress local rebellions if

---

[94] IRAQ SINCE 1918, *at* http://www.angelfire.com/nt/Gilgamesh/1981.html. Text of the constitution of the monarchy, *at* http://www.geocities.com/dagtho/iraqiconst19250321.html.)

[95] TRIPP, *supra* note 37, at 58.

[96] IRAQ SINCE 1918, *supra* note 94.

[97] TRIPP, *supra* note 37, at 58.

[98] LEWIS, *supra* note 72.

[99] IRAQ SINCE 1918, *supra* note 94.

[100] TRIPP, *supra* note 37, at 59-60.

conscription was forced on the populace. The Iraqi government was told that Great Britain would not help either with the establishment of a military service system or with containing any uprisings that might result. This stance was seen by Iraqi nationalists as an example of an attitude of colonialism on the part of the British, but the conscription bill failed to get through the Parliament that year.[101]

Throughout the mandate years, Iraqi nationalists continued to call for complete independence. Although a new treaty was drafted to give Iraq more independence within the mandate framework, it did not satisfy the nationalists and was never implemented. The Labour Party government in London announced in June 1929 that it would support Iraq's admission the League of Nations in 1932, and negotiations resulted in a new Anglo-Iraqi Treaty, signed in June 1930.[102] Under the terms of the treaty, Iraq gave Great Britain the right to use air bases in the country and to move troops across the country, though the treaty specified that the forces "shall not constitute in any manner an occupation, and will in no way prejudice the sovereign rights of Iraq."[103] In addition, there would be consultations between the two countries in matters of foreign policy and mutual assistance in wartime. In return, Iraq would become independent. The treaty was to be effective for 25 years and to come into force when Iraq joined the League.[104]

The treaty negotiation process had been so frustrating, however, that the Iraqi prime minister, Abd al-Muhsin al-Sa'dun, who had been pro-British in orientation, committed suicide on November 13, 1929. He was followed in office by Nuri al-Sa'id, who imposed restrictions on the political opposition and the press. It was his administration that concluded the 1930 treaty.[105]

### C. Monarchy (1932-1958CE)

Iraq was admitted to the League of Nations on October 13, 1932, as a sovereign state, though with continued strong British influence. As a condition of admission and in response to the complaints of the Kurds and of the small Christian Assyrian community, the Iraqi government issued a declaration guaranteeing the rights of foreigners and minorities within the borders. These rights explicitly included freedom of religion.[106]

Iraq's borders created an arbitrary line between parts of the nation and the other Arab areas, disrupting traditional trade routes. The northern part of the new nation suffered economically from the division from Syria and Iran, with which residents had had commercial relationships, while in the south the line drawn by across the desert, a region the British thought of as uninhabited, disturbed long-used tribal migration patterns. In addition, there were disputes over the borders with Kuwait, Saudi Arabia,

---

[101] *Id.* at 61-63.

[102] ENCYCLOPEDIA OF THE ORIENT, *supra* note 91, http://i-cias.com/e.o/angl_tr_iraq2.htm. Treaty of Alliance, June 30, 1930, U.K.-Iraq, Foreign Office, 15 TREATY SERIES (1931).

[103] *Quoted in* IRAQ SINCE 1918, *supra* note 94.

[104] LEWIS, *supra* note 72, at 39.

[105] ENCYCLOPEDIA OF WORLD HISTORY, *supra* note 74, at http://www.bartleby.com/67/2402.html.

[106] TRIPP, *supra* note 37, at 74-75.

and Iran.[107]

In the same year that Iraq achieved its independence from the mandate status, a Land Settlement Law was adopted. It continued the trend to privatization of land holding begun under the *tanzimat* reforms of the Ottoman era.[108] The law, which had been supported by the British, created a new category of land ownership called *lazmah* and allowed all settled tribesmen who had been cultivating the same plots for over fifteen years to claim the rights to them, so long as the land remained in the same tribe. While the purpose was ostensibly to prevent peasants from losing their land, the result was that upper class urban citizens and tribal sheiks acquired deeds to the best lands from the government committees in charge of the reform. Those who actually worked the land were often dispossessed.[109] The next year a Law Governing the Rights and Duties of Cultivators was enacted that gave landowners power over the tenant farmers. Crop failures became the responsibility of the tenants, and many of them ended up tied to the land working off debts to the landlords. Since these tenants had no right to the land they farmed, they could be evicted at any time.[110]

In addition to the tensions created in society by the land reform, the divisions that existed before independence persisted, including the Sunni/Shia conflict, the different interests of urban and rural areas, and the aspirations of the Kurds and the Assyrians for their own countries. The Assyrians, denied their own nation, pushed to have their religious leader, the patriarch or Mar Shaman, be given some kind of authority, but both British and Iraqi leaders turned down this request. In response, the Assyrians refused to recognize the legitimacy of the new Iraqi government, and as a counter-response, the Iraqi leaders held the Mar Shaman under virtual house arrest, beginning in the middle of 1933. They wanted him to sign a document renouncing any claim to governing authority. Assyrians with arms headed for the Syrian border, but were repelled. The Minister of the Interior had adopted a policy of elimination toward the Assyrians. This policy was to be implemented by a Kurdish general, Bakr Sidqi, whose troops killed about 300 Assyrians, including non-combatants, following several small clashes. This event brought the Iraqi army into political affairs and strengthened the case for a conscription law.[111]

In September 1933, King Faisal, who had become a unifying symbol in Iraq, died while out of the country seeking medical treatment. He was succeeded by his son, King Ghazi, who was inexperienced and considered to be not interested in politics.[112] The following February, a National Defense Bill was passed by the Parliament, finally setting up the long-discussed system of conscription and establishing an expanded armed forces. The enlarged army was welcomed by those who supported a strong, centralized state, largely the Sunni Arabs, but viewed with suspicion by the Shia and the Kurds. In the absence of a strong royal symbol of national unity and following the passage of the new defense and land holding systems, a group of tribes met to discuss their grievances. A charter summarizing the issues was presented to the government in March 1935 that focused on the lack of representation of the Shia majority in the Parliament and judiciary and called for freedom of the press, a reduction in taxes, and new, free

---

[107] LEWIS, *supra* note 72, at 40.

[108] *Id*. at 42.

[109] IRAQ SINCE 1918, *supra* note74, *at* http://www.bartleby.com/67/2404.html.

[110] TRIPP, *supra* note 37, at 85.

[111] LEWIS, *supra* note 72, at 40-43.

[112] SPENCER, *supra* note 1, at 63, 65.

elections. In addition, a petition was written calling for the dissolution of the Parliament. [113] When this approach did not succeed, the tribes rebelled. The rebellions were suppressed, but the resentment of the Shia leaders was recognized, and in the general election of August 1935, the leadership in Baghdad helped elect a number of Shia sheiks to the Parliament. [114]

Trouble with the tribal groups was followed by unrest in the Kurdish region, where a revolt occurred in August 1935 that lasted until March 1936, following the declaration of martial law in the area. In addition, there were many Kurdish communities that refused to comply with the conscription law, as did some Shia tribes in the lower Euphrates region. When rebellion broke out in the lower Euphrates, armed forces had to be sent there as well. Small rebellions continued to break out in various regions, and General Bakr Sidqi was in command of the troops that suppressed them. During this period there was political unrest in Baghdad as well, as the prime minister, Yasin al-Hashimi,[115] began issuing legislation by decree and had the police and intelligence officers track those critical of his rule. Opposition newspapers were shut down. Compulsory military training was added to the school curriculum. These moves made it appear that al-Hashimi wanted to become a dictator, and those loyal to the king and to military leaders were displeased. [116] In October 1936, Bakr Sidqi led a coup d'état, seizing control of the government from al-Hashimi, beginning a pattern of instability and military influence in Iraq's political life. Sidqi himself was assassinated the next year by a member of a faction within the army. There were 47 cabinets between 1937 and 1941, plus six attempted military coups. [117]

A complicating factor in the political life of Iraq was the death of the King Ghazi in an automobile accident in April 1939. His son, who became King Faisal II, was still a young child, so a cousin, Amir Abd al Ilah, became regent. While Ghazi had supported Arab nationalists and opposed the sheiks who had gained powerful positions under the British, Abd al Ilah and Nuri al-Sa'id, the prime minister, [118] were considered Iraqi nationalists and favored cooperation with Britain. [119]

When World War II began in Europe in 1939, Iraq severed diplomatic relations with Germany, interning German nationals in the country and offering full support to the Allies. In addition, Nuri al-Said introduced regulations that put Iraq on a wartime basis, with censorship of the media, rationing, and provision for requisition of supplies if needed. The government could now issue decrees and administrative regulations, without parliamentary input. [120]

These new controls did not succeed in providing political stability, however, and on April 1, 1941,

---

[113] TRIPP, *supra* note 37, at 82.

[114] *Id.* at 86.

[115] Yasin al-Hashimi, d. 1937, after having served twice as prime minister. He also had been an officer under the Ottoman Empire. WIKIPEDIA, *at* http://en.wikipedia.org/wiki/Yasin_al-Hasmimi.

[116] TRIPP, *supra* note 37, at 87-88.

[117] SPENCER, *supra* note 1, at 66-67.

[118] Served as Prime Minister numerous times. *See Iraq Ministers*, LEAGUE OF NATIONS PHOTO ARCHIVES, http://www.indiana. edu/~ league/ministeriraq.htm.

[119] LEWIS, *supra* note 72, at 45.

[120] TRIPP, *supra* note 37, at 99-100.

another military coup d'état took place, bringing Rasid Ali al-Kaylani, a former prime minister,[121] and four generals to power. This time the consequences were greater than in previous coup attempts, as they removed the regent, as well as the prime minister. In fact, the regent was indicted on charges of having taken unconstitutional actions that undermined the army and national unity.[122] The regime the military installed was ultranationalist in nature and sympathetic to the Axis. It refused consent to British troop landings. The British, arguing that the refusal was a violation of the 1930 Anglo-Iraqi Treaty, sent in troops for a second occupation of Iraq; Rashid Ali and the ruling cabinet fled to Egypt. On May 30, 1941, an armistice was signed, reestablishing the regency.[123] Rashid and the four generals were in turn charged, tried, convicted, and sentenced to death. The generals were executed when they returned to the country, but Rashid remained abroad. Others received long terms of imprisonment.[124] Thus, while a formal legal system was in existence, it was used as a tool of political forces by both sides in the events of 1941. In addition, this second occupation by the British army and the alignment of the monarchy with the invading forces contributed to a widespread distrust of the king and regent, who were seen as out of touch with popular, nationalist sentiment.[125]

The war years were difficult economically for Iraq, and the income gap between rich and poor expanded. A 1939 law had made it possible for landlords to pay a one-time fee in lieu of land rent to the state, accelerating the previous trend toward distribution of the land to private owners.[126] The wealthy of the landlords rose over the next few years and prices increased, as did the black market. The British provided a degree of political stability, however, by sponsoring a purge of the army and administration. They also pressured the Iraqi regime to pass several economic measures, including a law on the regulation of economic life. However, the black market and inflation remained problems for several years.[127]

In addition, in 1943, an Amendment Law was passed to modify the constitutional structure. A key provision permitted the king (or the regent) to dismiss cabinets, in order to prevent a government that was hostile to the monarchy from forming.[128] A paragraph was added to article 120 permitting the king, with the Council of Ministers, to declare a state of emergency when there was danger, rebellion, or "anything which disturbs the peace." An added article stated that Parliament could not pardon those convicted of offenses that were likely to change the form of government.[129] Political parties, banned during the conflict, were permitted again in 1946, however the government curtailed the activities of the

---

[121] WIKIPEDIA *supra* note 115, *at* http://en.wikipedia.org/wiki/Rasid_Ali_al-Kaylani.

[122] TRIPP, *supra* note 37, at 103.

[123] LEWIS, *supra* note 72, at 45-46.

[124] MATTHEW ELLIOT, "INDEPENDENT IRAQ": THE MONARCHY AND BRITISH INFLUENCE 1941-58 44 (1996).

[125] LEWIS, *supra* ntoe 72, at 46.

[126] ELLIOT, *supra* note 124, at 16.

[127] *Id*. at 44.

[128] *Id*. at 14-15.

[129] The arts. amended were 2-5, 1, 11, 14, 18, 20, 21, 23, 30-33, 35, 36, 38, 40, 42, 43, 46-48, 50-52, 55, 60, 62, 64, 65, 81-86, 88, 89, 91, 92, 108, & 120. Gisbert H. Flanz & Fouad Fahmy-Shafik, *Iraq*, *in* 10A CONSTITUTIONS OF TE COUNTRIES OF THE WORLD: HISTORIC CONSTITUTIONS 4 (Feb. 1974).

most critical of them.[130]

In the next decade, pressure against the constitutional monarchy grew. From 1944 to 1946, sixteen labor unions were licensed, three-quarters of which were under the control of the Iraqi Communists.[131] In response to criticism of the government's handling of a strike at the Iraq Petroleum Company, some newspapers were closed, and editors and other opposition leaders were prosecuted.[132] The 1948 Portsmouth Treaty with Great Britain,[133] which would have provided for a joint Iraqi-British board to decide on defense matters of mutual interest, enraged nationalists who were unhappy with the continued foreign role in Iraqi government policy. The treaty proposal, together with discontent over rising prices and food shortages, led to the uprising of 1948. The Prime Minister had to back down on the treaty, which strengthened the hand of the opposition.[134] The creation of Israel, a Jewish homeland in the midst of the Arab world, and the defeat of the Iraqi army as it joined with other Arab forces to try and destroy Israel, was seen by some as a sign of a weakness that had to be overcome.[135]

In 1952, there were large-scale demonstrations against the government, at a time of economic hardship following a bad harvest, and martial law was declared.[136] All political parties were again banned, some newspapers were suspended, and a curfew was imposed. The political climate then has been described as more repressive than it had been at any other time.[137] Another political crisis was precipitated by the 1956 signing of the Baghdad Pact, a regional defense agreement between Great Britain, the United States, Pakistan, Iran, and Iraq. Once again nationalists could paint a move by the government as pro-British. Martial law was imposed in the wake of the signing, to control the strikes and demonstrations, and several hundred people were arrested.[138] A group of young army officers began secretly plotting to overthrow the government and the monarchy. In July 1958, soldiers entered the royal palace and killed the king, who had come of age in 1953, and the still-active regent, together with a number of family members. Members of the government, including the Prime Minister, were also assassinated. The British embassy was attacked and burned by anti-government mobs.[139] The constitutional monarchy came to an end.

### D. First Revolution (1958-1963CE)

---

[130] LEWIS, *supra* note 72, at 47.

[131] MARION FAROUK-SLUGLETT & PETER SLUGLETT, IRAQ SINCE 1958: FROM REVOLUTION TO DICTATORSHIP 38 (1987).

[132] ELLIOT, *supra* note 124, at 57.

[133] Signed Jan. 15, 1948, never ratified. ENCYCLOPEDIA OF WORLD HISTORY, *supra* note 105, *at* http://www.bartleby.com/67/3878.html.

[134] LEWIS, *supra* note 72, at 47.

[135] SPENCER, *supra* note 1, at 71; TRIPP, *supra* note 37, at 124.

[136] LEWIS, *supra* note 72, at 48.

[137] FAROUK-SLUGLETT & SLUGLETT, *supra* note 131, at 44.

[138] SPENCER, *supra* note 1, at 71-72.

[139] *Id.* at 72.

The officers leading the rebellion closed the Parliament, issuing Proclamation No. 1, which stated that a Republican regime had been established. Further proclamations announced the form of the new government, and a provisional constitution was issued on July 26, 1958.[140] Iraq was described in the constitution as part of the "Arab nation" and Islam was listed as the official religion. Kurds and Arabs were described as equal partners in the nation.[141] In addition, the document called the state a republic, though one without a representative legislature. A Sovereignty Council of three men was established at the head of the state.[142] A key institution was the Special Supreme Military Court, established early in the new regime. It was designed as a public forum for the trial of members of the old government, but was kept in session after the initial trials to consider the cases of those charged with conspiracy against the new government.[143] After the early executions, a number of the officials of the former government had their sentences commuted from capital punishment to prison terms, and a few were pardoned altogether.[144]

The regime, which was initially quite popular, changed both the foreign and the domestic policies of the state. The pro-Western stand of Iraq gave way to a pro-Soviet orientation. Within the country, the revolution altered the social structure, taking some power from the landlords and sheiks and giving it to the urban workers, the peasants, and the middle class.[145] Among the steps taken were broadening educational opportunities, improving health care, and enacting laws on labor practices. The labor laws limited the number of hours of work in a day, raised the minimum wage, and gave workers protection against accidents and unemployment, but they were not well implemented.[146]

In addition, land reform measures were undertaken. The law on land, Law 30 of 1958, created some limits on the size of individual holdings, though they were still relatively high. The idea was that the rest of the land would be distributed to landless peasants as small plots.[147] Cooperatives would be established between peasants, and contracts that were more favorable to the farm laborers would be introduced. In the cities, low-cost housing was built and housing associations were developed to help make it possible for civil servants, teachers, and others to afford to build or buy their own houses, through the provisions of low-interest loans.[148] In addition, on December 11, 1961, Public Law 80 was passed that reasserted national control of oil concession areas that had not yet been exploited but that had been previously given to the Iraq Petroleum Company.[149] This meant that over ninety-nine percent of the

---

[140] Flanz & Fahmy-Shafik, *supra* note 129, at 6.

[141] LEWIS, supra note 72, at 51.

[142] TRIPP, *supra* note 37, at 152.

[143] *Id*. at 168.

[144] SPENCER, *supra*, note 1, at 73-74.

[145] LEWIS, *supra* note 72, at 49-50.

[146] TRIPP, *supra* note 37, at 168.

[147] *Id.* at 155.

[148] FAROUK-SLUGLETT & SLUGLETT, *supra* note 131, at 76-77.

[149] *Id*. at 78.

original concession was returned to government control, and oil revenues for the state increased.[150]

However, ruling authority was held by those who had created the coup d'état, known as the "Free Officers" and headed by Colonel 'Abd al-Salam 'Arif and Brigadier 'Abd al-Karim Qasim. Government administration in the capital city and beyond continued as before. Political parties, including the Iraq Communist Party, attempted to organize popular support, but were controlled by the ruling officers. Trade unions and peasant associations remained illegal until early 1959, and soon thereafter were controlled as well. Qasim attempted to run all public associations and used the system of patronage jobs to extend his influence.[151] A rift developed between Qasim and Arif, as Arif supported the idea of joining the Egyptian-Syrian Union, backed by the Ba'ath Party, which had been founded in the 1940s and embraced socialism and Arab unity.[152] Qasim was supported by the Communist Party and other nationalist, rather than pan-Arabist, factions and was eventually successful. Arif was tried on charges of treason and given a death sentence in January 1959; he was pardoned almost four years later, in December 1962.[153]

Qasim's relationship with the Communist Party ended, and by the early 1960s he was politically isolated. Rebellions by the Kurds and attempted coups initiated by unhappy military officers further weakened his hold on power. As political repression increased, political organizations became clandestine, including the Ba'ath Party, as well as the Communists, several Islamist groups, and Kurdish parties. Qasim's government postponed any real autonomy for the Kurds and fighting broke out between some Kurdish tribes and the army. The government described the tribes as "feudal" and outlawed the KDP, the Kurdish Democratic Party. However, the partial success of the rebellious groups against the army made Qasim seem like an inadequate leader to the officers and further weakened Qasim's rule.[154]

Qasim lost ground with other Arab states as well, because of his stance against the independence of Kuwait. Under the Ottomans, the port of Kuwait was part of the province of Basra, one of the three Iraqi provinces in the empire. Until the late 19th century, the emir of Kuwait paid annual tribute to the governor of Basra and in return was given functional independence. The tribute stopped when one emir found it to be an unnecessary expense. He came to an agreement with Great Britain, and Kuwait became a British protectorate. In 1961, Kuwait was granted independence, and the Arab nations, other than Iraq, welcomed the small state to the Arab League. Qasim argued that the nation had been unfairly separated from Iraq by imperialists of the previous century and threatened to send troops to regain Kuwait. Since the other Arab League members sent a peace keeping force to Kuwait, Qasim backed down.[155]

By the end of 1962, Qasim had alienated a group of officers in the army, the other Arab nations, and numerous Iraqi political parties and factions, including student groups, the Communist Party, and the

---

[150] LEWIS, *supra* note 72, at 50.

[151] TRIPP, *supra* note 37, at 150-152.

[152] The Ba'ath Party Constitution states that property and inheritance are two natural rights, protected within the limits of national interest, but also identifies the party as a socialist party. *Quoted in* Flanz & Fahmy-Shafik, *supra* note 129, at 89. The full name was originally al-Hizb al-Ba'th al-'Arabi, "Party of the Arab Resurrection," *supra* note 1, at 87.

[153] LEIWS, *supra* note 72, at 50.

[154] TRIPP, *supra* note 37, at 158-162.

[155] SPENCER, *supra* note 1, at 81.

Ba'ath underground organization. Despite popularity with the general public, he no longer had an effective base of support with which to resist the next revolution. With a history of British dominance in the mandate period and the authoritarian moves of successive rulers since that time, the government could not retain legitimacy in the eyes of the public. In addition, it could no longer override the ethnic, sectarian, and class divisions in the society.[156]

### E. Second Revolution and Continued Instability (1963-1968CE)

On February 8, 1963, military units led by Qasim's opponents took over key government sites, including the radio station and the Ministry of Defense building. Qasim was executed without trial.[157] It was the Ba'ath Party that organized the coup. They established a National Council of the Revolutionary Command (NCRC) as the highest decision-making body and installed Colonel Arif as President. The NCRC was composed of 12 Ba'ath Party members, including officers and civilian leaders, and four Arab nationalists. All six members of the Military Bureau were on the Council. Among the first steps taken by the new government was a campaign of arrests, torture, and executions of members of the Iraq Communist Party. It is estimated that about 3,000 people were victims in this campaign, which was largely carried out by the growing National Guard controlled by the party, not by the regular army.[158] A proclamation issued by the NCRC stated that the "the police and the National Guard are authorized to annihilate anyone who disturbs the peace. The loyal sons of the people are called upon to cooperate with the authorities by informing against these criminals and exterminating them."[159] The formal judicial system thus became irrelevant to the operations of the armed representatives of the government.

The Ba'ath Party was relatively small and not very unified, with few leaders with governing experience. As a result, the new government's control of the country was not very complete. The Ba'ath leaders increaased their reliance on the National Guard, rather than on the regular army for support. The regime was further weakened by rebellions in the Kurdish territory and by the breakdown in unity talks with Egypt and Syria, which led Egypt's leader Gamal Nasser to challenge the Iraqi Ba'ath Party's legitimacy. Colonel Arif and his supporters in the military took over in a coup in November 1963.[160]

Arif's five-year rule was characterized by the dominance of the military in the government and by the participation of Arif's relatives and close friends in key positions. This second new regime in less than a year received the support of the group of civilians and military officers who were followers of Nasser and wanted Iraq to become part of a larger state with Egypt. The unification was to be accomplished by 1966 but never actually took place. In May 1964, the Joint Presidency Council was formed and the following December a Unified Political Command was set up to work on the question of a constitutional union with Egypt.[161] In addition, in 1965, the eagle of the United Arab Republic was

---

[156] LEWIS, *supra* note 72, at 52.

[157] SPENCER, *supra* note1, at 83.

[158] TRIPP, *supra* note 37, at 170-171.

[159] FAROUK-SLUGLETT & SLUGLETT, *supra* note 131, at 85.

[160] LEWIS, *supra* note 72, at 53-54.

[161] *Id*. at 54.

adopted as the national emblem of Iraq.[162]

In May 1964, a constitution was promulgated that described Iraq as a fully sovereign state with an official religion of Islam. It was stated to be democratic and socialist, with reliance on the Arab heritage and the spirit of Islam. There was a bill of rights and private property was declared to be inviolable and could be expropriated only for purposes of public utility and for a fair compensation. The economy was to be centrally planned, with both public and private sectors. Inheritance was guaranteed, following the dictates of Islamic family law. The structure of the state included a president with broad decision-making powers. An elected National Assembly would eventually make law, but during a transitional period of up to three years, the Cabinet and the President would together function as the legislature.[163]

Arif's regime was faced with growing economic and social problems, exacerbated by a crisis of business confidence in the face of the political instability. Capital was flowing out of the nation. Two months after the constitution came out, Arif announced the nationalization of all banks, the insurance companies, and thirty two other large industrial and commercial businesses. The companies would be run by a state economic organization. However, with a lack of trained personnel to run the organization, the move did little to help the economy. These policies became a source of dissension within the regime, as did the attempt to undo the results of Law 80 on the relationship between the state and the Iraq Petroleum Company. There was a proposal that in return for a payment of £20 million, equity participation by the government in a national oil company, and increases in the levels of production, the government would return to the Company the right to the full concession area. Law 80 had limited the company to already explored territory. The new arrangements was controversial and was never ratified.[164]

In 1965, the military nature of the regime was modified. The NCRC was dissolved, and a civilian cabinet began to exercise legislative power. However, the National Defense Council retained overall control over the cabinet. In September, the moderate nationalist, 'Abd al-Rahman al-Bazzaz, became the first civilian Prime Minister since July 1958. His reform program, which he called "rational" socialism, promised no further nationalizations, stability, and the rule of law. No more political opponents would be arrested, free expression of political views would be permitted, and eventually a parliamentary system would be reinstated. However, political parties were still outlawed, though al-Bazzaz claimed that elections would begin again in the future. There were also plans to relax import controls and increase compensation to landlords whose holdings were expropriated under the land reform of 1958.[165]

The administration of al-Bazzaz lasted only about eleven months; however, once again the leadership was not unified, with some political groups strongly opposed to his economic programs and military officers unhappy with his attempts to arrange a settlement with the Kurds. In 1964, a cease-fire had been signed between the Iraqi government and the leaders of the Kurds, but by April 1965 fighting had broken out again. The shah of Iran assisted the Kurds in winning significant battles with the Iraqi army, making relations between the two nations tense. Al- Bazzaz wanted a permanent solution and proposed an amnesty, support of the use of the Kurdish language, and local autonomy in administration

---

[162] FAROUK-SLUGLETT & SLUGLETT, *supra* note 131, at 95.

[163] Flanz & Fahmy-Shafik, *supra* note 129, at 9-10.

[164] FAROUK-SLUGLETT & SLUGLETT, *supra* note 131, at 95-96.

[165] *Id.* at 97-98.

of education, health, and municipal institutions. Further, he proposed early elections and Kurdish representation in the provincial and national legislatures. These proposals were acceptable to the Kurds, but not to the Iraqi army.[166] In 1966, he was forced to resign, and from that time until July 1968, a series of military governments controlled the country that opposed the peace plan.[167]

Among the policies pursued by the military regime was a recommitment to the underlying principle of Law 80 on the oil fields, that the government should be in control, rather than private business. Laws 97 and 123, of August and October 1967, increased the role of the state oil company in the former concession area, and a 1968 decision gave that company the exclusive right to develop the North Rumaila oilfield.[168]

Administration of all policies throughout the period was uneven due to the frequent changes of government. There were, for example, eight ministers of industry and transport and seven of public works from 1964 to 1968. The land reform program initiated under the law of 1958 did continue, with forty percent of the land taken from large holdings distributed to farmers and the rest rented out by the Ministry of Agrarian Reform.[169]

## IV. Ba'ath Regime (1968-2003 CE)

### A. Establishment

By 1968, the government had lost support among the general populace, as well as with the military. The fact that Iraq did not have a large role in the 1967 Arab/Israeli war played a part in the loss of legitimacy, as did the factional, ethnic, and sectarian conflicts within the regime. Military officers with no organizational or popular support coordinated a coup in July 1968, and the Ba'ath party took power from them within a few weeks. The Ba'ath party had developed into a more highly organized political body than it had been in 1963, with a greater focus on Iraqi domestic issues, with less interest in Nasserism and a pan-Arab identity. In 1967, a militia and an intelligence service were added, and local branches of the party were established. Within two months of the formation of the government, there was an attempted coup by a different faction in the military. This attempt led the Ba'ath party to undertake a series of purges over the next five years, with pro-forma trials, executions, and assassinations, to eliminate opposition.[170] Charges were leveled against the small Jewish community in the country; some were accused of spying for Israel and others of working for Iran. Televised trials and public hangings were used as a means of intimidation.[171] Thus, once again the formal legal system was used for public purposes.

In September 1968, the Revolutionary Command Council (RCC) promulgated a provisional constitution that established it as the highest authority, with legislative functions. A little over a year later,

---

[166] LEWIS, *supra* note 72 at 56.

[167] FAROUK-SLUGLETT & SLUGLETT, *supra* note 131, at 97-99.

[168] *Id.* at 100.

[169] *Id.* at 101.

[170] LEWIS, *supra* note 72, at 57-58.

[171] TRIPP, *supra* note 37, at 196.

in November 1969, the Council announced that the positions of Premier, Chief of Staff, and President of the Council would be consolidated with that of President and that the Council would be enlarged to include the entire leadership of the Ba'ath Party. Amhad Hasan al Bakr was the President and Saddam Hussein, a relative of Bakr, became Vice-President.[172] Bakr was respected by the public as a nationalist and brought prestige to the regime, while Hussein had worked on organizing the party structure.[173]

About two years later, the RCC promulgated a new, interim constitution.[174] It stated that Iraq was a "Sovereign People's Democratic Republic" with a goal of creating one Arab state (art. 1). Islam was declared as the state religion (article 4), and Arabic was the official language, with Kurdish being also official in the Kurdish region (article 7). The rights of the Kurdish and other minority peoples were acknowledged (article 5). The economic system was based on state planning in the context of a socialist system and Arab economic unity (article 12) . Private ownership of property was guaranteed, so long as individual economic actions were taken in a manner compatible with the centralized plan. As in the 1964 constitution, private property was protected from expropriation except for considerations of public interest and with just compensation (article 16).

The RCC was again confirmed as the highest authority of the state (article 37), with a President, Vice-President, and other members who enjoyed full immunity (article 40). The RCC ratified all laws and also had the ability to issue laws, decrees, and implementing decisions (article 42). There was a Council of Ministers in the executive branch that discussed policy matters and developed specific programs to implement those policies. Its work was supervised by the secretariat of the presidency, whose head was a member of the cabinet and whose members were not subject to the civil service regulations. The cabinet itself generally was at least one-third Ba'ath Party members; by the late 1980s there were forty one positions in it.[175] The cabinet has been described[176] as having no independent decision-making authority, merely working to carry out the RCC's policies. The full structure of the executive branch was outlined in a law from 1964, the Law of the Executive Power, which has been amended several times. Each Ministry was also established through a law on its organization.[177]

A National Council of People's Representatives was described in the constitution and authorized to meet twice a year, with the possibility of extraordinary sessions being called by the RCC (article 47). The National Council considered draft laws proposed by the RCC or the President, and if a draft was approved, it was sent to the President for promulgation. If not approved or if modified, it was returned to the RCC. When differences remained after a second reading, the draft was to be reviewed by the two Councils jointly and could be approved only with a two-thirds vote (articles 51 & 52). The National Council could also consider its own draft laws if presented by one-fourth of the representatives, provided those drafts did not concern military, financial, or public security issues (article 53).

Details of the organization of this legislature were enacted by a law issued by the RCC in March

---

[172] Flanz & Fahmy-Shafik, *supra* note 129, at 13.

[173] LEWIS, *supra* note 72, at 58-59.

[174] Issued July 16, 1970. Full text at Flanz & Fahmy-Shafik, *supra* note 129.

[175] LEWIS, *supra* note 72, at 183-184.

[176] OFRA BENGIO, SADDAM'S WORD 58 (1998).

[177] Law No. 50, 1964, Al Mukhtar, *supra* note 57, at 76.

1980. It stated that there would be 250 representatives and voting was based on single member districts, with roughly 250,000 people living in each district. Although the ballots were secret and all citizens over 18 were eligible to vote, the candidates had to have their qualifications approved in advance by the appointed election commission. This gave the Ba'ath Party sufficient control over the electoral process in practice to be able to control the legislature.

The formal requirements for office were that the person be at least 25 years old, be an Iraqi by birth, not be married to a foreigner, and have an Iraqi father. The candidate could have a foreign mother, however, so long as she was of Arab origin and from another Arab country. Those who had lost property, whether land or in other forms, under the land reform measures or the business nationalizations were not eligible to serve. Finally, all candidates had to establish their belief in the principles of the 1968 revolution, the Ba'ath Party goals. Under these conditions it is not surprising that Ba'ath candidates tended to win over seventy percent of the seats.[178]

The constitution also established a judicial system, described as independent and open to all (article 60). However, there were no detailed provisions on the structure of the judiciary. The court system was based on laws promulgated by the RCC and modeled after the French judiciary, as it had been since the days of Ottoman rule.[179] There were separate courts for civil, criminal, administrative, religious, and other matters, under the supervision of the Ministry of Justice. All judges were appointed by the president. The religious courts largely handled personal status matters, such as marriage, divorce, and inheritance, and followed various schools of Islamic jurisprudence, the Hanafi for the Sunni Arabs, the Shafii for the Sunni Kurds, and the Jafari among Shia Arabs. Separate courts handled similar issues for the Christian and Jewish communities.[180]

There were five appellate districts, in Baghdad, Basra, Al Hillah, Kirkuk, and Mosul. The courts of first instance were divided into two types, 18 with unlimited powers, located in the provincial capital cities, and 150 with limited powers in smaller towns. There were also six peace courts handling the most minor matters. Decisions of all courts of first instance could be appealed to the district courts. Criminal cases were adjudicated by magistrates, located wherever there were civil courts. Their decisions could be appealed to six sessions courts. Litigation against government entities was handled by the Administrative Court, established under a special law promulgated in November 1977, and on appeal by the Court of Cassation. The Court of Cassation was itself divided into general, civil, criminal, administrative, and personal status benches. Should there be disputes over jurisdiction between the Administrative Court and other courts, the Court of Cassation determined the proper venue. There was also a Revolutionary Court, separate from the appellate court system, to handle offenses against the internal or external security of the state, including economic and political cases. The RCC also could establish special security courts, to handle cases of espionage, treason, and "anti-state" actions. Proceedings in these special security courts were closed to the public. Appeals from the security courts were handled by the Court of Cassation, which also was the court of first instance for cases involving high government officials.[181]

---

[178] LEWIS, *supra* note 72, at 181.

[179] Law No. 160, 1979, Al Mukhtar *supra* note 57, at 76.

[180] LEWIS, *supra* note 72, at 184.

[181] *Id*. at 184-185.

Only the RCC could modify the constitution, by a two-thirds vote (art. 63). A presidential decree, issued October 24, 1970, supplemented the interim constitution and ended the state of emergency, which had in theory been in effect since 1958.[182] The constitution was the highest legal instrument in the country, followed by five major codes: the Civil Code (Law No. 40, 1951), the Code of Civil Procedure (Law No. 83, 1969), the Commercial Code (Law No. 30, 1984), the Penal Code (Law No. 111, 1969), and the Code of Criminal Procedure (Law No. 23, 1971). These Codes are written in general language, leaving much up to the interpretation of the courts. There were also 2,000 specific laws, covering 700 subjects, including legislation dating from the monarchy period.[183]

Another important development of 1970 was the conclusion of talks between the Iraqi government and Kurdish leaders. Throughout 1968 and the first half of 1969 there was fighting in the north, but a agreement was worked out, and the Kurdish leaders cut off their ties to the Iranians and implemented a cease-fire. The agreement, written into a manifesto in March 1970, gave more recognition than previously promised to a separate Kurdish identity, with a special, unified administrative region that would implement special measures. The details were to be worked out by a joint committee, and the new arrangement would start by 1974. The committee began its work by planning a Kurdish legislature and Kurdish language programs in the schools. However, the rapprochement began to fall apart in the face of assassination attempts on the key Kurdish general that were blamed on the Iraqi government.

The government also instituted a policy of moving Arab settlers into the Kurdish areas, particularly near the Kirkuk oil fields. In addition, in May 1971, Saddam Hussein became the chairman of the joint committee and made it clear that the planned Kurdish legislature would not be able to handle matters related to defense, finance, and the oil holdings.[184] However, on March 11, 1974, in keeping with the March 1970 agreement, the interim constitution was amended by a resolution of the RCC that stated the Kurdish region would have autonomy.[185] On the same day the Law of Autonomy for the Kurdistan Region was issued, followed laster in the month by a Law of the Legislative Council for the Kurdistan Region.[186] These legislative moves were insufficient to prevent further rebellion. In 1974, a major rebellion of the Kurds broke out that was successfully put down the next year, in part due to a 1975 agreement with Iran.[187]

In 1976, having consolidated power, the Ba'ath government instituted a successful economic reform program, including state-sponsored, modernized industry. The result of the efforts was a wider distribution of wealth, greater social mobility, increased access to services like education and health care, and further redistribution of land. Increased income from the oil price rises of the late 1970s helped the government greatly. The policies, sponsored by Saddam Hussein, gave a greater portion of the population

---

[182] Flanz & Fahmy-Shafik, *supra* note 126, at 14.

[183] Al Mukhtar, *supra* note 57, at 77.

[184] TRIPP, *supra* note 37, at 200-201.

[185] Resolution No. 247, amending art. 8, *translated in* LAW OF AUTONOMY FOR KURDISH REGION 5-6 (1974).

[186] Law No. 33 & Law No. 36, 1974, *translated in id.*, at 9-29 & 30-37.

[187] The agreement established a boundary in an area that had been disputed, and Iraq dropped claims to the Khuzestan region of Iran, while the shah agreed to stop supporting subversive elements in Iraq; LEWIS, *supra* note 72, at 62. Treaty of June 13, 1975, Iran-Iraq, 1017 U.N.T.S. 215.

a stake in the success of the government.[188]

### B. Saddam Hussein (1979-2003CE)

On July 16, 1979, President Bakr, who was seriously ill, resigned, and Saddam Hussein succeeded him. Hussein had already been chairman of the RCC.[189] In the 24 years he was in office, Iraq went through several major military conflicts, United Nations sanctions that had a major economic and social impact, and a number of internal plots by rivals for power.

The 1975 agreement that had settled relations with Iran had been concluded with the shah; in 1979, the Islamic revolution overthrew the shah and brought aggressive Shia leaders to power. Iraq became concerned that the balance between Sunnis and Shias in the country, which still favored the minority Sunnis, would be threatened. In July 1979, Shia Iraqis rioted in several cities, following a snub to the new Iranian leader, Ayatollah Khomeini, and a secret group of Shia leaders advocating Islamic rule was discovered to have ties to Iran. With these tensions in the background, in 1980, a Shia Islamist group in Iraq attempted to assassinate the Iraqi foreign minister, Tariq Aziz, and was suspected of trying to kill the Minister of Culture and Information as well. The government responded by deporting thousands of Shias of Iranian origin to Iran and by arresting members of the group in question. Hussein ordered the execution of the leader in the summer of 1980. By the fall, with border clashes having already taken place, Hussein announced the abrogation of the 1975 treaty. The Iran-Iraq war broke out on September 23, 1980, with an invasion of Iran by Iraq. While the proximate causes of the war were recent events, the underlying hostility and distrust between the people of Mesopotamia and the people of Persia has existed for thousands of years.[190]

The war lasted until the August 20, 1988 cease-fire, following Iran's acceptance of United Nations Security Council Resolution 598. It was costly to both sides; casualties were high, with estimates of the death total at over a million.[191] The political and economic costs of failing to win a swift victory were also high in Iraq. In response, Hussein instituted a campaign of suppression using his security forces and built up a personality cult through the popular press.[192]

By 1988, there was a Kurdish Autonomous Region, governed under the provisions of the 1979 agreement. The region had an Executive Council and a Legislative Assembly, which merely advised the Executive Council. The chair of the Executive Council was appointed by Saddam Hussein and was a part of the national cabinet. The Baghdad regime maintained strict control over the Autonomous Region, in part through a special review by the Court of Cassation of all local enactments and administrative decisions. [193]

---

[188] LEWIS, *id.* at 62.

[189] SPENCER, *supra* note 1, at 99.

[190] LEWIS, *supra* note 72, at 63-65.

[191] Federation of American Scientists, Military Analysis Network, *Iran-Iraq War 1980-1988*, *at* http://www.fas.org/man/dod-101/ ops/war/iran-iraq.htm.

[192] FAROUK-SLUGLETT & SLUGLETT, *supra* note 131, at 262-263.

[193] LEWIS, *supra* note 72, at 186-187.

During the Iran-Iraq war, Kurdish fighters that had either taken refuge in remote mountainous regions of the country or in Turkey began to return to Iraq. The attention of the Iraqi army was on the conflict with Iraq, and the vacuum was filled by Kurdish forces, who controlled the countryside in the north and sometimes assisted the Iranians in battle. In response, Hussein set a policy of destruction of the Kurds, to be accomplished gradually in 1987 and 1988 under the direction of his cousin, Minister of Defense Ali Hassan al-Majid. Adult male Kurds were subject to arrest and execution without trial, on the presumption that they participated in the rebellions; families were relocated to settlement camps; villages were razed without compensation; and the use of chemical weapons was authorized. In all about 50,000 Kurds were killed in the action, which has been condemned as genocide, and 60,000 left the country and entered Turkey.[194]

In 1990, the Interim constitution was re-issued, though never formally ratified due to the interruptions of the Gulf War.[195] It was identical to the 1970 document, containing the same number of articles and the same government structure, with the Revolutionary Command Council at the top. Five years later, the document was amended to confirm Saddam Hussein as President. That amendment was also never formally ratified, although there were elections in October 1995 to confirm Hussein's position. The constitution included extensive provisions on human rights, but in practice the regime was known to commit serious violations of those rights on a regular basis, including the use of torture, arbitrary and unlawful detentions, summary executions, and denials of fair trial.[196]

The second major war under Saddam Hussein's rule resulted from the invasion of Kuwait on August 2, 1990. The action was seen around the world as a case of unvarnished aggression, but for the Iraqi leaders, it was a step toward reestablishing control of a territory they had long viewed as rightfully theirs, based at a minimum on the Ottoman provincial structure.[197] In fact, as early as 1930, then King Ghazi had declared that Kuwait was part of Iraq.[198] The United Nations reacted by passing Resolution 660, calling for the removal of Iraqi troops from Kuwait, and Resolution 661, which imposed sanctions on trade to and from Iraq, including oil exports. There were twelve U.N. resolutions on the subject of Iraq's invasion of Kuwait, with the last approving of the use of force if needed to accomplish the withdrawal of the Iraqis.[199]

Twenty-six nations cooperated in defeating Iraq and forcing withdrawal from Kuwait. By the time of the cease-fire on February 27, 1991, fifteen percent of the territory of Iraq was occupied by American and other coalition troops. The end of the war was followed by a revolt among the Kurds and by rebellions of Shia Iraqis in the southern part of the country. Hussein used his Republican Guard troops to stop both uprisings.

---

[194] SPENCER, *supra* note 1, at 114-115.

[195] *Iraq Background*, INTERNATIONAL CONSTITUTIONAL LAW, *at* http://www.oefre.unibe.ch/law/icl/iz__indx.html.

[196] U.S. Department of State, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2003, *at* http://www.state.gov/g/drl/ rls/hrrpt/2003/27928.htm.

[197] SPENCER, *supra* note 1, at 117-119.

[198] Al Mukhtar, *supra* note 57, at 73.

[199] S/Res/660, U.N. SCOR, 2932nd Sess. (Aug. 2, 1990) & S/Res/661, U.N. SCOR, 2933th Sess. (Aug. 6, 1990), *both available at* http://www.un.org/Docs/scres/1990/scres90.htm.

The aftermath of these skirmishes and the war itself was further world condemnation through Security Council resolutions, extended sanctions, and the establishment of UNSCOM, the UN Special Commission on Iraq's Weapons of Mass Destruction.[200] The United States established air exclusion zones in the north and the south to prevent further attacks by Hussein on the inhabitants of those regions. The Iraqi National Assembly formally recognized Kuwait's borders and independence on November 10, 1994.[201]

Within the northern, Kurdish region, there was a split between supporters of two different political parties, the Patriotic Union of Kurdistan (PUK) and the KDP. In May 1994 their disputes over land rights and political leadership evolved into military clashes. By 1996, the KDP asked the Iraqi government to intervene and troops were sent to install that party in power. Since this action occurred in a United States-protected region, the United States responded with missile strikes.

Throughout the 1990s, Saddam Hussein consolidated his own power, promoting his sons as *de facto* vice-presidents in 1995.[202] The U.N. economic sanctions had created hardship conditions in the country. In April 1995, Security Council Resolution 986 permitted the partial resumption of oil exports, so food and medicine could be purchased. Cooperation with UNSCOM ended in October 1998, and Security Council Resolution 1284 of December 17, 1999, rejected by Iraq, created a replacement agency, the U.N. Monitoring, Verification and Inspection Commission.[203] However, in November 2002, weapons inspectors from the United Nations were permitted to return to Iraq, following an additional U.N. resolution. By March 2003, the United States, unhappy with the progress on the diplomatic front toward disarmament and convinced that the Iraqis had weapons of mass destruction not yet found by U.N. inspectors, launched an attack on the country that resulted in the downfall of Saddam Hussein's government.[204]

## V. Conclusion

Conflict along the many lines of cleavage in Iraqi society, rural versus urban, Sunni versus Shia, landholder versus peasant, Kurd versus Arab, and even Kurd versus other Kurd, has continued to the present and affected the shape and effectiveness of every legal system established in the country. Legal institutions, such as courts, for a long time had forms familiar from other countries, but were used as tools in the political process. Although human rights guarantees and statements on equality of all citizens have been written into various constitutions and other pieces of legislation, they have not been truly honored by any government and have been egregiously disregarded by the recent regime. Iraq lacks a history of peaceful transfer of power from one administration to the next; instead, there have been frequent coups of various sorts, with the incumbents often executed. These patterns of conflict and political hijacking of the legal system pre-dated Saddam Hussein's regime and continued during his time in power. Whether the conflicts can be managed in such a way as to allow for the growth of a stable, representative government with a robust legal system is as yet unknown.

---

[200] SPRENCER, *supra* note 1, at 122-123, 125-127. S/Res/687, U.N. SCOR, 2981st Sess. (1991), *available at id.*

[201] BBC News, *Timeline: Iraq*, *at* http://news.bbc.co.uk/1/hi/world/middle_east/737483.stm.

[202] IRAQ HISTORY, *supra* note 4, at 25.

[203] S/Res/986, U.N. SCOR, 3519th Sess. (Apr. 14, 1995), *available at* http://www.un.org/Depts/dhl/resguide/scact1995.htm; S/Res/1284, U.N. SCOR, 4084th Sess. (Dec. 17, 1999), *available* at http://www.un.org/Depts/dhl/resguide/scact1999.htm.

[204] BBC News, *supra* note 201.

Prepared by Constance A. Johnson
Senior Legal Research Analyst
June 2004