
The 2003 war on Iraq and the ongoing controversy surrounding it has produced a huge number of books covering an array of subjects—from the military action itself to developments in the postwar period and the American and Iraqi efforts to build a new Iraq. The books belong to different categories, including memoirs, modern history, sociology, or politics. Some are apologetic in their approach, others are supportive of the war and its aftermath, and still others are highly critical. Arato’s book belongs to the last category. The books on post-Saddam Iraq may also be categorized as representing two kinds of narratives: one Iraqi and one Kurdish. Indeed, there is a hidden debate or competition between the Iraqi nation-state narrative and the Kurdish ethnic narrative. This debate colors the works of most scholars who write about Iraq and the Kurds. Both approaches are affected by political developments and personal preferences. Eric Davis’s book *Memories of State: Politics, History, and Collective Identity in Modern Iraq* (2005) may be said to represent the nation-state narrative, while Peter Galbraith’s *The End of Iraq* (2006) typifies the ethnic narrative. Arato’s book seems to belong to the first category.

*Constitution Making Under Occupation* focuses on constitution making in post-Saddam Iraq in the context of a comparative and theoretical approach. The first, theoretical and comparative part is the strongest section in the book. It compares the American enterprise in Iraq to other American efforts to impose a constitutional revolution from the outside, namely in Germany and Japan. He reaches the conclusion that, as models, these two cases were irrelevant to the Iraqi reality; the main American blunder was to take these two examples and graft them onto a totally different political and cultural setting (32–37).

In the second chapter, Arato analyzes the dominant contemporary paradigm on constitution making in the world, and once again points out the problems raised by adapting it to the Iraqi case. On the whole, Arato sees the model adopted in Iraq as “pathological” (60). The rest of the book centers entirely on Iraq. Arato discusses the political conditions surrounding the adoption of the nation-state model and reconstructs the tortuous ways in which both the interim and the permanent constitutions were promulgated. Ayatollah Sistani can be said to be the protagonist of constitution making in this section of the book.

In the preface, Arato says that his book is part of “a rescue operation; an attempt to redeem the still redeemable” (vii) from the project of constitution
making in post-Saddam Iraq. Arato’s book is in fact a scathing criticism of the Bush administration’s war in Iraq and of the constitution engineered by the Americans in the shadow of the occupation. Arato doesn’t mince his words when he speaks about “the perverse but revolutionary attempt of the Bush government to use democratization as the ideological arm of a neoimperial project to establish a new type of control over the Islamic Middle East” (vii). Describing the process of constitution making as a total failure, mainly because of a lack of continuity of the Iraqi state itself, the author opined that “Iraq should not have been invaded … and its state should not have been destroyed.” (264) His conclusion is that Iraq missed its best, albeit not yet its last, chance “for state building through constitution making.” (134)

Arato’s book, which abounds with examples and models of constitution making in different parts of the world, displays the author’s remarkable depth and erudition. Its main drawback, however, is the lack of historical depth on the state of Iraq itself and a lack of wider historical context. Thus, for example, there is no discussion of Iraq’s earlier constitutions and of the context in which they were articulated. It is worth pointing out that since its inception the Iraqi state has had no less than six different constitutions, a fact which speaks volumes about the tortuous and turbulent politics in Iraq. This in itself can explain why constitution makers at times felt as if confined in a straitjacket.

Secondly, representing the state-centered narrative, Arato directs his harshest criticism against the Kurds—again, without taking into account the historical context in which they operated. “The Kurds,” he contends, “wanted international legal recognition for American illegal actions in which they were deeply implicated” (200). Accusing them of unilateral actions, he argues that “the Kurds illegally continued to solidify all their positions as a quasi state … They assumed their positions in the Iraqi interim government, accepted the financial grants due to them, fully participated in elections … they had their TAL [transitional administration law] and were feasting on it too” (201). The bottom line, he suggests, was that “the concessions to the Kurds in the TAL and the illegalities they committed despite the TAL” were among the main causes for the failure of Iraqi state formation. (203). Evidently, Arato ignores the “illegalities” perpetrated against the Kurds in Saddam Husayn’s genocidal war in the 1980s; he also disregards the fact that their struggle for autonomy has been going on since the establishment of the Iraqi state and, furthermore, that all Iraqi opposition groupings had agreed on federalism prior to the 2003 war. Last but not least, the Iraqi state formation has so far failed, mainly due to the Sunni-Shi‘i strife and not to the Kurdish-Arab one.