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SPECIAL REPORT

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The Limits of Institutional Engineering

Lessons from Iraq

About the Report

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Summary

- Post-conflict, post-totalitarian societies like Iraq possess many economic, political, social, and cultural characteristics that are not conducive to democratic governance. A central pillar of democracy promotion is that judicious institutional engineering—crafting new institutions and other elements outlining the democratic rules of the game—can overcome these obstacles and engender stable democracies.
- Two theories explain the success or failure of institutional engineering: institutions as causes, or institutions as indicators. The first theory states that constitutions, electoral systems, and other components of democratic governance are the direct causes of democratic stability or collapse. The second theory states that institutions are indicators, not causes. Like barometers, they allow us to forecast impending storms or calm weather, but they do not cause these phenomena.
- Many methodological weaknesses are evident in the studies that supposedly support the "institutions as causes" theory. One type results from nonrandom selection of units. A second type results from nonrandom assignment to treatment. Left uncorrected, these weaknesses generate inaccurate and uncertain estimates of causal effects and may invalidate many studies of institutional design.
- Different types of methodological corrections for these biases exist, some statistical, others qualitative. All of them demand that we first model the selection process before estimating the effects of institutions; we must identify the origins of institutions to evaluate their effects correctly.
- By using a method called process tracing to scrutinize institutional engineering in Iraq, it becomes clear why intensified violence followed the drafting and ratification of the Iraqi constitution. It is not surprising that institutional engineering did not forestall violence; therefore, we can conclude that the Iraqi experience does not support theories of institutional design.

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- Although the "institutions as causes" approach claims that "getting the institutions right" can create a stable democracy in otherwise unfavorable conditions, it is imperative to view the studies that support it with skepticism. Nonetheless, these weaknesses do not completely dismiss the theory of institutional engineering. One study of one country can never produce a definitive conclusion. Instead, policymakers should pay closer attention to the methodological underpinnings of all findings based on case studies and other forms of observational research.

Introduction

All new democracies face challenges to their stability. These challenges are even greater in societies in which exceptionally severe conflicts trigger external intervention. Experience and theory suggest to many policymakers and analysts that institutional engineering—crafting new institutions and other elements outlining the democratic rules of the game—can engender and sustain democracy in these post-conflict situations. Careful drafting of constitutions, they argue, produces conditions in which former militants are willing to resolve conflicts peacefully and thus sustain democracy in seemingly inhospitable environments. Policy prescriptions derived from this belief were applied to Iraq in the period preceding the occupation and in the following years. Scholars looking ahead to postwar Iraq were chastened by the magnitude of the task. The prospects for democracy looked bleak. Religious and ethnic cleavages undermined national identity and threatened national unity. Iraq's economy had been devastated by decades of war, mismanagement, and sanctions, leaving its middle class (often seen as a critical social pillar of democracy) impoverished. Iraqi political culture, with limited democratic resources to draw on, had been brutally transformed by decades of dictatorship. Yet, despite all these daunting obstacles, most analysts were cautiously optimistic: democracy could be established and sustained in Iraq as long as we were able to "get the institutions right." As one contributor to a forum on how to democratize Iraq summarized the conventional wisdom about institutions, "Once an electoral system is actually established, politicians respond with remarkable predictability to the incentives it produces. The trick is to get those incentives right."[1]

Practitioners agreed with this assessment. A report from the Rule of Law Program at the United States Institute of Peace maintained that in Iraq and other countries, "The constitution-making process can be a transformational one for societies, if properly organized and given adequate attention and resources.... In the case of Iraq, the importance of good constitutional process will be greater than ever; indeed, this process provides perhaps the only nonviolent opportunity for a workable compromise to be reached as to the shape of the Iraqi nation."[2]

It is quite clear that something went awry in Iraq, as its democratic experience has not been consistent with initial expectations and hopes. The onset of a vicious intercommunal civil war accompanied the early years of Iraqi democracy. Although increased American troop levels and a new counterinsurgency campaign have halted the slide to full-scale civil war and brought better security, high levels of violence continue. Most observers do not believe that improved security has permitted or encouraged extensive political reconciliation. Iraq's major political actors remain enmeshed in deep conflict and retain extraconstitutional mechanisms for enforcing their preferences. Institutional engineering, to date, has not been successful in Iraq. How shall we evaluate the promise and the limits of institutional engineering in light of that failure? The conventional wisdom supports two conclusions. First, institutional engineering is not a panacea. Given the unfortunate conditions in Iraq in 2003, institutional engineering has not been a shining success. Nonetheless, its outcomes are superior to some truly awful alternatives; we should not let the best become the enemy of the good. Second, institutional engi-

neering could have produced better results if the process had been managed differently and the final agreements had incorporated what we now know to be superior arrangements. The failure of constitution making to stabilize politics in Iraq was a missed opportunity stemming from a flawed process, not a flawed theory.

There are important methodological reasons, however, to evaluate institutional engineering with caution. Confidence in the democracy-promoting power of institutional engineering rests on insecure foundations. The vast majority of our knowledge about the process of constitution making and the effects of political institutions is based on nonexperimental knowledge that is subject to a much higher degree of uncertainty than scholars and practitioners currently acknowledge.[3]

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Without careful attention to critical methodological issues, conclusions based on case study research are subject to severe bias and may reach incorrect conclusions. Closer attention to methodology may suggest that institutions do not have the strong causal powers attributed to them. In contrast to the theory of institutional design, an alternative hypothesis argues that, in some contexts, a broad set of political, economic, social, and cultural conditions are generally conducive to democratic stability. In other contexts, including Iraq through the end of 2008, conditions are so inhospitable to democracy that no process of constitution making or institution building can engender democratic stability.[4]

The Conventional (Institutional) Wisdom

Political scientists have advanced two theories explaining how properly designed institutions secure democracy. These two accounts are based on starkly different assumptions and advance very different prescriptions. The power-sharing school argues that deep sociocultural divisions present the greatest threat to democracy. The lesson for institutional engineers is that divided societies can best secure democracy if institutions encourage grand coalitions uniting cohesive political parties representing distinct cultural blocs. Stability is reached because representatives of all the major societal groups participate in decision making while each group retains autonomy in subnational affairs. The combination of power-sharing and autonomy convince otherwise hostile groups to cooperate within a democratic system.[5] Alternatively, and in direct contrast, the induced-moderation school recommends institutions that encourage parties and politicians to moderate their extreme chauvinistic temptations and to build constituencies across cultural blocs, blurring the boundaries between cultural communities. One approach thus advocates compromise between groups; the other advocates building new communities across group lines.

Both theoretical approaches tacitly posit a three-stage sequence of compromise, crafting, and consolidation. In the compromise stage, the parties renounce militancy and embark on a constitution-making process. In the crafting stage, the parties enter into negotiations, select institutions of democratic governance, and supervise their implementation. In the consolidation stage, the new institutions enforce the democratic rules of the game. Thus, properly crafted institutions secure democracy.

What is wrong with this seemingly reasonable reconstruction of the steps leading to democratic stability? Institutional-engineering theorists assert that democracy becomes "the only game in town" when the proper institutions are put in place. They attribute causal influence primarily to the third and final stage in which institutions enforce democratic outcomes, and secondarily to the middle stage of constitution making. This causal assertion may be incorrect because the prior decision to compromise may itself be more important than the institutional embodiment of that compromise. If the relevant actors enter into the second and third stages of the process having already made a firm commitment to cooperation and democratic procedures,

then the dynamics of the constitution-making process and the specific institutions that result may exercise an only marginal causal effect. If prior attitudes and commitments are key to democratic stability, then institutions operate as indicators of underlying attitudes and not as direct causes of the stable and consensual politics generated by those underlying attitudes.[6]

For example, one account of the Nigerian transition from military rule to democracy in 1978 noted that the Nigerian civil war came to an end only when civilian leaders realized that they were not likely to win the next round of conflict. As violence became less useful, they turned their attention to rebuilding democracy.[7] Note the subtle but significant difference: it was not institutional engineering that ended the civil war, but the perception that civil war would not allow politicians to achieve their goals that engendered new appreciation for institutions. This observation thus suggests a contrary and noninstitutional perspective that emphasizes the factors and conditions that influence attitudes toward accommodation and compromise before the crafting stage. The noninstitutional perspective highlights the conditions under which actors develop preferences for one type of political regime over another. Most important, we must identify the structure of conflicts dividing the relevant political actors, along with the calculations actors make about how best to achieve their interests given those conflicts. Relatively modest conflicts might generate conciliatory attitudes and resilient democracies, while more intense and unbridgeable conflicts generate attitudes that are not conducive to democratic practices, such that no "rules of the game" produce reliably democratic politics.

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The distinction between attributing causal effects to institutions and attributing causal effects to prior attitudes and conditions is of enormous significance. If the noninstitutionalist perspective is correct, it tells us that transferring institutions into inhospitable terrain will not produce the intended outcomes.[8] It is thus of central importance to the fields of conflict resolution and democracy promotion that we correctly identify the relevant causal factors.

To make this evaluation, we thus need to recognize three rival interpretations of the relationship of institutions to democratic viability:

1. Institutions as Causes: institutions have large and predictable causal effects, and "getting the institutions right" can create democratic stability in otherwise unfavorable environments.
2. Institutions as Indicators: institutions are like barometers: they indicate a coming storm, but they are not causes of the storm. Given widespread willingness to compromise among the relevant political actors, a wide array of institutions is fully consistent with democratic politics. Uncompromising attitudes, on the other hand, will be left unchanged by seemingly well-constructed institutions.
3. Institutions as Strong Indicators and Weak Causes: institutions both indicate underlying attitudes and exercise some independent causal effects. These effects are not sufficiently large to make the difference between a robust and a highly fragile democracy. Rules matter, but only at the margins: they shape outcomes within democracies, but rarely do they make a decisive difference transforming autocracies into democracies.

The first scenario is the conventional wisdom. The second scenario is what methodologists call a null hypothesis, one that denies the causal relationship stated by the hypothesis being evaluated. The burden of proof is placed on the investigator to reject the null hypothesis. This rule is a very important safeguard against various forms of confirmation bias—the tendency to emphasize confirming evidence and downplay disconfirming evidence. The third hypothesis is a hybrid scenario that recognizes that the rules of the game are not totally without causal influence. We know that democracies

differ from one another, that some of these differences may be attributable to their institutions, and that if we alter democratic institutions, we will see some marginal effects in the partisan composition of governments and the policies they pursue. These differences are not decisive in securing a democracy from threats to its collapse; rather, they exercise marginal effects in democracies whose stability is well secured by a host of cultural, economic, and social factors.

Figuring out whether institutions are causes, indicators, or some hybrid is not an easy task. We cannot resolve this debate by standard methods of observing a set of countries, cataloguing their institutions, and then attributing the durability of democracy to the associated institutions. This research strategy is very common, but it is fundamentally flawed. To understand why, we need to consider the critical distinction between experimental and observational studies. Understanding this distinction will yield important instructions for how to measure the causal effects of institutions.

Experimental versus Observational Studies

Since mid-2004, Iraqi citizens have gone to the polls four times under different electoral arrangements: twice to elect a parliament, once to ratify the constitution, and once to elect provincial council members. Over the same period, Iraqi politicians negotiated both a transitional law and a permanent constitution. They then entered into negotiations to amend and extend that constitution and altered the electoral system. It seems natural to refer to Iraq as a laboratory for institutional engineering where we can conduct a great experiment in post-conflict institutional therapies. But the lab-experiment metaphor is highly misleading. Engineers and medical researchers conduct their studies under highly controlled conditions. Policymakers and scholars of new democracies rarely enjoy the luxury of genuine experiments; they must work with the weaker substitute of observational studies. It is crucial to acknowledge the gap between these two types of studies.

Policymakers and scholars of new democracies rarely enjoy the luxury of genuine experiments; they must work with the weaker substitute of observational studies.

Consider a basic question about the causal effects of an intervention: Does a new vaccine prevent epidemics?[9] Questions like this are generally settled by a randomized controlled experiment. First, experimenters draw a random sample from the population of interest. Put very simply, this means that if every member of the population has the same likelihood of being selected, the sample will be representative of the population, and inferences made about the sample can be generalized to the population. Next, experimenters randomly assign each subject to one of two groups: a treatment group and a control group. Random assignment ensures that the two groups will be quite similar; on average, they will have the same background characteristics. Following random assignment, the experimenter manipulates the intervention, giving the vaccine to the treatment group and a placebo to the control group. After the vaccine is administered, experimenters monitor the groups and measure the rate at which they contract the disease. If the two groups contract the disease at the same rate, we conclude that the vaccine does not have the desired causal effect. If vaccinated persons contract the disease at a statistically significant lower rate, we conclude that the vaccine has the desired effect. We can make this inference with a high degree of confidence because random assignment made the two groups roughly equal, so any differences in the rate of illness can be attributed to the vaccine.

In the absence of random assignment, our inferences are much more uncertain and much more vulnerable to bias. Suppose the two groups differ on some relevant variable, such as family income. Income might be related to the likelihood of contracting the disease, for example by affecting nutrition or hygiene. Factors like income that might independently affect the likelihood of the disease are called confounding factors. If the vaccine is given only to wealthy persons and the placebo given only to poor

persons, then income (and the better nutrition that income can purchase) might cause the difference in postvaccine rates of disease, not the vaccine. Controlled experiments generate reliable knowledge because randomization is a powerful antidote to confounding variables.

We might then imagine an experiment in which all post-conflict nations are randomly assigned to treatment and control groups such that, on average, the two groups have similar characteristics: similar levels of wealth, similar degrees of ethnic heterogeneity, and other relevant factors. Nations in the treatment group are given institutional formats considered to be optimal; nations in the control group are given an institutional placebo. After a few years, we see whether the treatment group retains democracy at a higher rate than the control group. But for obvious reasons, conducting such an experiment would be extremely infeasible.[10]

Observational studies are the only feasible recourse for studying the role of institutions. In an observational study, subjects assign themselves to the control and treatment groups, while scholars and policymakers observe the outcomes. In the absence of random assignment, controlling for confounding variables becomes far more difficult, estimates of causal effects will be biased, and hence there will be greater uncertainty about the validity of the derived lessons because alternative explanations will be difficult to dismiss.

Two types of bias plague observational studies.[11] The first stems from a nonrandom assignment mechanism, a procedure that places subjects into control and treatment groups. A random mechanism controls for confounding variables, whereas a nonrandom mechanism usually introduces bias. For example, if we conceive of public and private schools as the treatment and control groups, we know that people choose these schools based on a host of factors, including family income and motivation. If income, motivation, and other possible assignment mechanisms are associated with school performance, then a methodologically naive study that omits these factors will attribute to school type (public versus private) the causal influence actually exercised by these confounding factors. That misattribution of causal effect is what methodologists call bias.

Studies of institutional engineering should be especially sensitive to omitted variable bias because the economic, social, and political environment influences institutional selection.

Studies of institutional engineering should be especially sensitive to omitted variable bias because we know that, just as income and status affect the preference for private over public schools, the economic, social, and political environment influences institutional selection. Consider two nations that embark on constitution making. The political leadership of nation A selects a particular constitutional blueprint, one that is endorsed by leading theorists of democratic stability. The leadership of nation B selects a constitutional blueprint that is disparaged by those same leading theorists. Over time, democracy endures in nation A, while nation B collapses into anarchy. Shall we say that institutional engineering worked? That conclusion would be entirely premature, for we have not ascertained whether nation A had some characteristic that both predisposed its leaders toward the preferred institutional choice and also made democracy more stable. In the language of contemporary methodology, institutional selection must be endogenized: analysis of institutional effects must first consider institutional origins. Only after we have taken account of institutional origins can we make unbiased estimates of institutions' causal effects.

The second major source of bias involves nonrandom sample selection, or selection bias. Because the sample is not randomly chosen from the population, the units included in an observational study are not likely to be representative of the broader population. For example, a study of two dozen instances of post-conflict, constitution-making processes is not a random selection from the population of all nondemocratic nations, for the sample consists only of those nations that have decided, if only temporarily, to enter into a constitution-making process. Presumably, the decision to enter such a process reflects some other factors. Consider two groups of nations suffering internal conflicts. In nations of type A, all of the participants in the conflict reach

the conclusion that they cannot unilaterally win a military victory, that fighting is no longer a viable option, and that they must compromise with other parties. Nations of type A enter the sample of nations engaged in constitution making, and, hence, they are included in the study. In nations of type B, on the other hand, one or more parties to the conflict believes that it has the military resources to achieve unilateral victory and its goals without compromise. Nations of type B do not enter the sample of nations engaged in constitution making and so cannot be included in the study. The nonrandom selection mechanism is the belief that military victory is not possible, and so compromise is necessary. Clearly, these beliefs are correlated with democratic governance. Without appropriate corrections, the study will reach biased conclusions.

Despite these weaknesses, statistical techniques and case-study methods do exist that can compensate for the general inability to assign nations randomly to treatment and control groups. One such technique is called matching. For every subject who selects herself into a treatment group, investigators search for comparable subjects (e.g., similar background, similarly motivated) who did not receive the treatment. If the investigator can successfully match treated and nontreated subjects on many characteristics, it becomes increasingly reasonable to treat the decision to enter the treatment group as random. In other words, if we balance the characteristics of the treatment and control groups so that the two groups are, on average, equal, then we can make unbiased estimates of the treatment's effect. The success of a technique like matching depends entirely on the ability to create comparable groups. There is a healthy dose of art mixed in with the science, and improper matching can be more harmful than helpful.[12]

The major lesson is that we need to examine very carefully the methodological underpinnings of any study that estimates the causal effects of institutions, and that we should treat with great skepticism studies that omit a model of the selection process. This maxim suggests that a great deal of what we thought we knew about institutions may prove to be wrong. Consider the question of parliamentary versus presidential systems. It has long been alleged that presidential systems are more vulnerable to breakdown than parliamentary systems. Based on observational studies, we know that the average lifespan of a parliamentary system is more than twice that of presidential systems. But these early studies did not simultaneously study the origins of presidential and parliamentary systems. One recent and methodologically sound analysis finds that presidential systems are much more likely to succeed military dictatorships than civilian dictatorships. Democracies that follow military dictatorships, moreover, are more likely to collapse than democracies that follow civilian dictatorships. Once we control for the origins of presidential and parliamentary systems, the independent causal effect of those institutions disappears. To quote the study

> [S]ome democracies emerge in countries where the probability of a democratic breakdown is high, regardless of the type of democracy that exists, and presidential democracies have emerged more frequently in such countries. Thus, the fragility of presidential democracies is a function not of presidentialism per se but of the fact that presidential democracies have existed in countries where the environment is inhospitable for any kind of democratic regime.[13]

Evaluating the causal effect of institutions is more difficult than many theorists and practitioners have recognized. We cannot simply read off institutional effects from outcomes, attributing democratic failures to bad institutions and democratic successes to good institutions. Among the many threats to validity, this report has emphasized the need to identify selection effects, whereby political actors assign themselves to treatment or control groups; that is to say, influenced in no small part by background conditions, they select their institutions. The result is that the effects of background conditions become confounded with the effects of institutions, making causal appraisal difficult. These problems can, in principle, be solved by careful attention to research procedures, but far too many conclusions have already been drawn from stud-

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ies that were not methodologically sound. It appears that overly casual approaches to profound methodological challenges have contributed, as one meta-analysis suggests, to the widespread belief that "democracy and federalism are easily developed in places like Iraq."[14]

Prewar Prescriptions

Were analysts fooled into thinking that institutional engineering could permit democracy to be established in Iraq? A number of publications appeared in 2002 and 2003 with prescriptions for how to build democracy in Iraq.[15] The authors of these blueprints understood very well the many obstacles to Iraqi democracy, but they drew on past experience and scholarly analysis to argue that institutional design could, if done correctly, overcome these many impediments to stable democracy. The success of the project, all agreed, hinged on "getting the institutions right."

Two profound problems appear in these proposals. First, while individual blueprints were all plausible, they did not agree with one another. On almost every component of constitutional design, scholars made nonoverlapping, even contradictory, prescriptions. Second, none of the architects of Iraqi democracy based their design on sound methodological principles or a sturdy evidentiary base.

On almost every component of constitutional design, scholars made nonoverlapping, even contradictory, prescriptions.

- **Governmental Structure.** Many of the blueprints cautioned that presidential systems produce zero-sum conflicts and rigidity. These scholars prescribed a parliamentary system. Other blueprints, however, made a strong case for a presidential system, some of which had a directly elected president and some with an indirectly elected president. One blueprint split the difference, calling for a hybrid system with a weak president and a prime minister, topped off by a constitutional monarchy.
- **Electoral System.** One blueprint argued from the American experience that a "winner-take-all" system would encourage centrism and dilute ideological extremism as candidates were forced to cling to the middle ground. The majority of blueprints disagreed, calling instead for a system of proportional representation that would guarantee that no constituencies were permanently excluded from some position in the government. Yet, even these prescriptions differed from one another on the all-important details of how to organize proportional representation.
- **Federalism.** All of the blueprints endorsed federalism. But their visions of how to implement federalism dramatically diverged. One advocated drawing the boundaries of regional governments "along ethnic and/or religious lines so that the three major groups have significant control over their own political, social, and economic affairs."[16] A rival blueprint strongly disagreed, cautioning that dividing Iraq's administration along ethnic lines would "only entrench current divisions and might even lead to ethnic cleansing."[17]

These differences are not slight matters of emphasis that can be fudged. If one blueprint insists on drawing federal lines along existing ethnic boundaries and a second blueprint insists that such a system would encourage ethnic cleansing, then there is little room for compromise. Indeed, what is striking is that scholars based their blueprints on irreconcilable theoretical accounts. Some were based on what political scientists call power-sharing theory, which argues that democracy is best secured in divided societies if institutions encourage grand coalitions uniting cohesive political parties representing distinct cultural blocs. Others were based on the theory of induced moderation, which seeks to moderate chauvinistic temptations and to build constituencies across cultural communities. This was no small difference: one advocate of power sharing argued that induced moderation suffers from crippling weaknesses and should never be contemplated.[18] An advocate of induced moderation countered

with a warning against power sharing, citing the cautionary tale of Lebanon, where power sharing has "further polarized ethnic groups in a way that intensifies political instability and even violent conflict."[19]

None of these proposals were based on the results of experiments or research designs that might successfully replicate random assignment and experimental controls. They were based on anecdotal data and nonsystematic references to case studies whose methodological underpinnings should be treated with suspicion. Each element of each prescription was based on at least one observation that the institution in question had been effective in at least one democracy. Such permissive use of evidence suggests that a very wide range of institutions is compatible with democratic stability if the background conditions are appropriate.

Postwar Postmortems

The "institutions as causes" approach assumes that prior political, economic, social, or cultural factors do not indelibly influence the process of negotiating an institutional framework for democratic governance. Wise management of the process can get actors to the table to hammer out a compromise; inept management, on the other hand, produces flawed institutions that lack popular legitimacy and cannot secure democratic stability.

The process of institutional engineering in Iraq began in 2004 with the drafting of the Transitional Administrative Law; continued through elections for a provisional parliament, the formation of an interim government, and the appointment of a constitution-drafting committee; and ended in late 2005 with the drafting and ratification of a constitution and the first elections for a permanent parliament. By mid-2005, observers were beginning to worry about the dynamics and implications of the entire process. By the end of 2006, with the constitution ratified and parliamentary elections held, observers registered more emphatic concerns that the entire constitutional process had "gone awry" and produced a deeply flawed set of arrangements. Looking back on that process, one scholar of constitutions observed, "Neither the process nor the document it produced proved to be helpful, however, in founding a stable and just political community. If anything, the Iraqi constitutional effort aggravated the slide toward civil war."[20]

What went wrong? One veteran observer worried that the process was becoming overly inclusive and complex at the expense of speed. Three months passed between elections and the formation of the first government, raising fears of stalemated and ineffective rule that would be unable to solve pressing issues. The long delay was caused by the desire to include Sunni Arabs and Kurds in the government, along with the Shiite Arab parties that had gained the largest share of seats in Parliament. According to this diagnosis, bringing together Sunnis, Shiites, and Kurds meant apportioning posts demographically. While such arrangements might defer conflict in the short term, staffing the state and government by ethnic allocation would likely enhance intraethnic solidarity and exacerbate interethnic hostility "as citizens come to favor the interests of their various in-groups over the general good of the whole community. This is a recipe for civil breakdown or even state collapse."[21]

One year later, as the final form of the constitution took shape, observers made precisely the opposite criticism: that inclusiveness had been sacrificed for speed. According to the International Crisis Group, "The Bush administration chose to sacrifice inclusiveness for the sake of an arbitrary deadline.... As a result, the constitution-making process became a new stake in the political battle rather than an instrument to resolve it." This flawed process undermined consensus and marginalized Sunni Arabs in the political process. Unless reversed, the report warned, this process "is likely to fuel rather than dampen the insurgency, encourage ethnic and sectarian violence, and hasten the country's violent break-up."[22]

It is no easy task to reconcile a criticism of overinclusiveness with a criticism of underinclusiveness. Neither is it readily apparent that a less-rushed process would have induced the participants to put the national interest above their partisan and parochial interests. The core issues and struggles for power that polarized Iraqi politics and motivated violence predated the constitution-making process, and struggles by each party to advance partisan interests continued unabated throughout. The constitution-making process was not, as one report termed it, “an opportunity lost”[23]; rather, the dynamics and outcomes of the process followed directly from the preferences of the leaders of Iraq’s major sociopolitical communities.

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These critiques of the constitutional process also implicitly reveal a little noticed dilemma. On the one hand, institutions are viewed as mechanisms that facilitate conflict resolution and democratic stability. On the other hand, political parties are expected to consensually select the institutions charged with the responsibility of creating consensus. Political actors are somehow to resolve their conflicts and negotiate in good faith over institutions whose importance lies in their ability to resolve conflicts. In other words, institutions themselves are expected to be both a prerequisite and result of the constitution-making process—creating an impossible dilemma in many cases.

A report issued by the United States Institute of Peace, for example, explicitly noted that competing visions of the future Iraqi state repeatedly undermined the constitution-making process—not the structure of the institutions themselves. It is evidently not the management of the process that is at fault, but rather the pre-existing structure of conflicts that heavily stacks the deck against compromise.

Civil War in Iraq: Institutions as Indicators?

Contrasting with the “institutions as causes” theory, the “institutions as indicators” approach suggests that pre-existing conditions will heavily influence the process of institutional selection, and that these conditions are of greater causal influence than the institutions themselves. To test this hypothesis, we need to correct for the bias introduced by nonrandom assignment. Instead of assuming that prior conditions do not matter and beginning the analysis with the process of constitution making, we need to extend our scrutiny further back to look for traces of this influence using a methodology that social scientists call process tracing.[24] This involves compiling evidence about the links between successive steps in a long causal chain. We look for the traces of the relevant causal processes, searching for links between antecedent conditions, underlying attitudes (such as compromising or unyielding bargaining positions), and the subsequent process of institutional selection. The goal is to correct the bias induced by nonrandom assignment by gaining insight into the assignment process itself.

In Iraq, these antecedent conditions were not propitious for democracy. If institutions act as indicators and not as causes, then when conditions are inhospitable, we should not expect to observe repeated instances of compromise as actors converge on what they believe to be optimal democratic institutions. Instead, we should expect to see actors exploiting the process of institutional selection to secure more permanent advantage. In addition, given an inhospitable environment for democracy, we should see actors “hedging,” or reserving autonomous control over resources that would allow them to achieve their goals without being constrained by constitutional provisions. By adopting uncompromising negotiating positions, and by reserving access to extraconstitutional sources of influence, actors demonstrate their unwillingness to submit to binding procedural mechanisms of conflict resolution. Process tracing thus

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demonstrates why the constitution-making process was a failure, and why Iraq's new democratic institutions were founded just as the country was sliding to civil war.

Antecedent Conditions: The Structure of Conflicts

Analysts point to a host of historical, political, economic, social, and cultural conditions that make democracy difficult in Iraq. To argue that institutions are causes is to argue that institution building occurs in isolation from these conditions, and that the proper institutions compensate for these pre-existing disadvantages. This assumption is widespread among advocates of institutional engineering, but it often rests on very slender evidence. It is true, for example, that some poor countries, such as India, have democratized. But pointing to this fact hardly substitutes for systematic consideration of how antecedent conditions might shape institutions.

Conversely, to argue that institutions are indicators is to argue that antecedent conditions decisively shape institutional selection and democratic outcomes. According to eminent democracy theorist Robert Dahl, the intensity of the conflict separating two groups determines the probability that a government will permit the opposition to participate effectively in politics. Great conflicts generate high costs of toleration: each party will consider its opponents' ability to shape policy effectively to be highly threatening. When conditions produce these intense conflicts, each party will seek to obstruct its opponents' access to policymaking instruments. When conflicts are intense and compromise unattainable without sacrificing core goals and interests, we should expect parties to adopt uncompromising attitudes toward the rules of the game, to support institutions that best protect their core interests, to deny advantage or accommodation to opponents, and to refuse to relinquish control over extraconstitutional resources protecting core interests. Honest constitutional crafting and compromise occur only in low-stakes settings where conflicts can be resolved via rule of law.

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What were the costs of toleration in postwar Iraq? Nathan Brown, who has closely observed Iraq's constitution-drafting process, writes,

> The divisions among Iraq's major communities are not based on petty rivalries but on deep divisions, legitimate grievances, and understandable concerns. Such divisions are hardly timeless ... but they are proving increasingly difficult to surmount. Indeed, a disinterested but sympathetic observer would have no trouble understanding not only the goals of the various parties but also the reasons why their goals provoke mistrust among other Iraqis.[25]

The sources of this intense conflict are well known. Sunni Arabs wish to regain their dominant position within the state; Shiite Arabs wish to assert their dominance and relegate their Sunni-Arab tormenters to a subordinate political status; and Kurds wish to maximize their autonomy in the north.

These intercommunal conflicts are in turn rendered more complex by a series of intracommunal conflicts that have produced fighting between rival Shiite militias in the south. Superimposed onto this core inter- and intracommunal conflict are divisions over the role of religion in politics and the relative strength of the central state versus the provinces. And if these problems were not sufficient to derail institutional engineering, Iraq's oil resources are a tremendous motivator of conflict. Oil wealth breeds conflict by destabilizing both politics and economics, by aggravating ethnic cleavages and encouraging separatism, and by financing insurgencies. Oil has this effect because it "both exacerbates latent tensions and gives governments and their more militant opponents the means to fight them out."[26]

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Institutional Selection

These profound conflicts and the high costs of cooperation and concessions they generated had a readily observable effect on institutional selection. It should come as no surprise that observers described constitution making as having worsened the country's breaches, not healed them. Using the method of process tracing described above, we can break down constitution-making process step-by-step. This method shows that at every point, key players adopted uncompromising positions, tried to hijack the process to prevent rivals from having input, or demanded that key decisions be deferred to the future:

1. Sunni Arabs boycott the January 2005 elections to the transitional assembly.
2. The United States applies pressure to include Sunni Arabs in the constitution-drafting committee. Kurdish and Shiite Arab legislators reluctantly agree to restricted Sunni-Arab participation. Sunni Arabs join the committee in July 2005, just five weeks prior to the initial August 15 deadline.
3. The constitution-drafting committee is dissolved in early August 2005 following futile attempts to break the stalemate and achieve consensus.
4. The constitution-making process continues, conducted through an informal "Leadership Council" composed of leading Kurdish and Shiite Arab politicians who meet in private residences in the Green Zone.
5. The final draft of the constitution largely reflects a compact between the leaders of the major Kurdish and Shiite Arab parties, a compact whose broad outlines had been negotiated by exiled political leaders in a series of meetings held outside Iraq prior to 2003.[27] This Shiite Arab–Kurdish compact reflects neither an effort at an all-inclusive grand bargain based on power sharing, nor an effort to craft institutions that would induce moderation and centrism. Instead, the constitution embodies maximalist positions of both the Shiite Arabs and Kurds, while reserving for each community opportunities to heighten communal autonomy and maximize particularistic benefits. The constitution contains components deeply antithetical to Sunni-Arab interests, including a hard-line stance against the Baath Party, a deeply decentralized federal government with the possibility for further regional autonomy bordering on de facto partition, and the absence of central control and equitable distribution of oil revenues. Leaders of the major Shiite Arab and Kurdish parties present the Sunni-Arab delegation with a fait accompli that makes virtually no concessions. Given the Sunni-Arab–based insurgency and the growing interethnic civil war that has surrounded the constitution-drafting period, it appears that Shiite Arab and Kurdish parties are not willing to sacrifice their goals on behalf of democratic stability. Presented with a completed draft and asked, in effect, to take it or leave it, Sunni Arabs vote overwhelmingly to reject the constitution in the October 15 referendum.
6. A new electoral law is introduced for the December 2005 elections. The new system features proportional representation with 230 of the 275 seats in the Assembly allocated to Iraq's 18 governorates, whose voters would cast ballots for party lists. A system of national compensation would allocate the remaining 45 seats to parties whose percentage of the national vote exceeds their percentage of seats among the initial allocation of 230. This electoral format converges on the type of arrangement that at least some experts argue should mitigate chauvinism and thus cultivate more centrist parties and politicians capable of building alliances across sectarian divides. Far from fulfilling these hopes, the December 2005 elections demonstrate the deep entrenchment of narrow, sectarian parties at the expense of secular and transethnic parties. The new and improved electoral system simply returns the three major sectarian blocs to parliament, where they could resume conflicts left unresolved by the drafting of the constitution.[28]
7. A lengthy suspension of parliamentary activity follows the December 2005 elections. Not only does the Iraqi parliament fail to make substantial progress

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over the next two years on a single issue left unresolved by the constitution-drafting committee, but it largely ceases to operate since the vast majority of delegates either live abroad or refuse to make the perilous journey to the Green Zone.[29] The failure to make any progress on constitutional reform is explicitly endorsed by key Iraqi leaders, such as Abd al-Aziz al-Hakim, the leader of the Supreme Islamic Iraqi Council.

8. The January 2008 passage of reformed de-Baathification legislation, initially seen as a sign of progress, is not a major alteration of laws that had alienated Iraq's Sunni Arabs. Indeed, the new legislation actually extends de-Baathification to previously unaffected organizations, including the judiciary.[30]
9. Negotiations over a new provincial election law are stalemated for two months in summer 2008. The primary obstacle is the constitution's Article 140, which concerns the status of the hotly contested Kirkuk. Article 140 requires that displaced persons be returned to Kirkuk, a census of the city's population, and a referendum over its future status. As tensions mount, sectarian violence explodes, and Iraqi security and Kurdish peshmerga forces come perilously close to military confrontation in August 2008. The compromise reached in September schedules long-delayed provincial elections for January 2009 but excludes the three governorates of the Kurdish region, as well as the province containing Kirkuk itself. In other words, on the key issue of Kirkuk's status, as well as the status of other Kurdish territorial claims, the parties agree to not reach an agreement.
10. No agreement is reached over the distribution of oil revenues. In the absence of agreement, the Kurdish Regional Government begins to sign independent contracts with oil companies, in contrast to the wishes of Iraq's Sunni and Shiite Arab parties, which want the central state to have authority over the country's oil. As a result, one study finds, "the struggle over oil and revenue sharing legislation is helping to fuel conflict between Arab and Kurdish nationalism and competing visions of Iraqi national identity."[31]

When we trace the processes surrounding Iraq's constitution making, it becomes clear that the drafting of a constitution and the selection of electoral institutions have not been mechanisms for conflict resolution and accommodation: they have been instruments of intercommunal competition and conflict. The deep and bitter divisions within Iraqi society and polity have driven the process of institutional selection. That institutional engineering has failed simply reflects these underlying conflicts. Institutions are not causes of failure; they are indicators that the underlying structure of the conflicts is generating failure.

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Hedging: An Underlying Indicator

Given unyielding and uncompromising underlying attitudes, why bother with institutional selection at all? While the high costs of cooperation breed uncompromising attitudes, political leaders realize that the costs of suppression might be even dearer. It is therefore reasonable for political elites in high-stakes environments to attempt to secure an institutional advantage, which would be less costly than direct confrontation. To do so, these leaders "hedge," or they do not fully commit to the procedural regulation and adjudication of conflict. Rather, they retain access to extraconstitutional mechanisms for exercising autonomy, subverting the democratic process, and securing their core interests.[32]

One method of hedging that Iraqi political parties exercised abundantly was to commandeer key ministries and staff them exclusively with dedicated followers who would reliably work on behalf of their interests in utter disregard of institutionally mediated outcomes. Shiite political figures turned, among others, the Ministry of the Interior

and the Ministry of Health into party appendages. Iraqi parties practice patrimonial politics at the provincial and local levels as well, so that tight links of patronage tie party leaders to agents on the ground in bureaucratic offices, municipal councils, the judiciary, and the police force.[33] Another method of circumventing constitutional governance is to create "facts on the ground" that the constitution must accommodate. Thus, Kurdish political parties have used their considerable resources to extend control over disputed territories, most important the city of Kirkuk, and they have demanded that constitutional amendments recognize their territorial ambitions.

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The most significant form of hedging, however, has been to retain paramilitary forces under party control, and this accounts for the simultaneous occurrence of institutional engineering and descent into civil war. It is not the case that Iraq has been divided between advocates of peace and advocates of violence. The issues that motivated the civil war are precisely those that political leaders refused to resolve through compromise. Moreover, very close ties exist between leaders of political parties and the militias that fought the civil war. Muqtada al-Sadr, whose followers in the Sadrist Movement won 29 of the 128 seats by the United Iraqi Alliance in the 2005 parliamentary elections, led the Mahdi Army, the key organization that instigated violence against Sunni Arabs in Baghdad and other ethnically mixed towns. The Badr Organization, which the Iranian Revolutionary Guards established, equipped, and trained, is the armed wing of the Supreme Islamic Iraqi Council, whose leader, Abd al-Aziz al-Hakim, is often viewed as a "moderate politician." Both Kurdish parties, the Kurdish Democratic Party and the Patriotic Union of Kurdistan, have their own armed groups, or *peshmerga*. Peshmerga forces have been loosely integrated into the Iraqi Security Forces—their disposition is completely under the control of Kurdish leaders—from where they have been effective agents of anti-insurgency but consequently keen contributors to sectarian polarization. While the highly decentralized Sunni-Arab insurgency has not generated an overarching leadership, one of the two main Sunni-Arab parties at the height of the civil war, the Iraqi Front for National Dialogue, maintained close ties to insurgent groups. Civil war and insurgency accompanied constitution making precisely because war was the extension of politics by other means.

Recent Success, Future Stability: Does Institutional Engineering Provide the Foundation?

On January 31, 2009, Iraqis returned to the ballot box to elect provincial council members. Election day was calm with relatively high turnout, almost no violence, and limited voting fraud—results that encouraged many observers. Sunni Arabs increased their representation, which had been artificially depressed due to their boycott of the 2005 provincial elections. The significant gains of Prime Minister Maliki's electoral coalition seem to signal an endorsement of a secular and nationalist position and a rejection of Shiite provincialism. Combined with the dramatic reduction in violence that began in summer 2007, commentators speculated that Iraqi politics had entered a new era of normalcy in which parliamentary debate would supplant street battles.

However, it is important not to overstate the consequences of these elections. Provincial elections were held in only fourteen of Iraq's eighteen provinces. The Kurdish Regional Government decided not to hold a vote in the three provinces under its control. Elections were also not held in Tamim Province, home to the divided and oil-rich city of Kirkuk, control over which remains a major source of tension and potential conflict. While Iraqi Arabs and Kurds may one day peacefully negotiate a resolution to their many conflicts, neither side appears willing to compromise, and the threat of military engagement remains very real.[34]

In addition, recent signs of progress, while very welcome, cannot be attributed to institutional engineering. The evident decline in violence, including attacks on U.S. forces and the government and intersectarian fighting, results from a host of unrelated factors. The December 2007 Department of Defense Report to Congress on Security and Stability in Iraq stated,

> The overall reduction in security incidents can be attributed to several factors, including the continued decrease in capabilities of al Qaeda in Iraq (AQI) and militia extremists, increased tribal initiatives against AQI and other extremists, Muqtada al-Sadr's ceasefire order to his Jaysh al-Mahdi militia, the increased capability of the Iraqi military and police, the separation of previously mixed sectarian communities into homogeneous neighborhoods, and the sustained presence of Coalition and Iraqi forces among the population.[35]

The Sunni-Arab alliance with the United States and, more indirectly, with the Maliki government, is clearly a marriage of convenience based on shifting incentives. Sunni tribes in al-Anbar Province shifted their loyalties in response to efforts by al-Qaeda in Iraq to monopolize the insurgency and impose its authority over the tribes and their lucrative economic activities.[36] As the alliance with U.S. forces benefited tribal leaders, other Sunni-Arab forces replicated it in Tikrit, Diyala, and elsewhere. In Baghdad itself, Sunni Arabs, increasingly squeezed between encroaching Shiite militias that pushed Sunnis out of mixed neighborhoods, on one side, and the growing threat of al-Qaeda domination, on the other side, likewise decided to forge an alliance with American forces. The gradual cessation of Sunni militancy then gave the Maliki government the space needed to launch an offensive in Basra and thus impose authority over rival Shiite militias, especially the Jaysh al-Mahdi.

Civil wars and other violent conflicts produce shifting alliances. In that sense, the political changes in Iraq of the last eighteen months are not totally unexpected. It is far too soon to say with any certainty what the outcome will be. One possibility is that the alliances that have brought some security and stability to Iraq will not be sustainable, and Iraq will return to political fragmentation and violence.[37]

Another possibility is that temporary alliances will become consolidated, and Iraq will evolve into a constitutional political order. The eventual outcome, however, is not being determined by institutional engineering, but rather by the interplay of preferences, capabilities, and strategies. One can hope that the outcome will be a constitutional order, but that order will be the effect of political and military dynamics, not their cause.

Conclusion: Do Institutions Matter?

This report raises two types of challenges to those who believe that institutional engineering is the source of democratic stability in post-conflict societies. The first, more significant, challenge is methodological. Far too many discussions of the promise of institutional engineering are based on methodologically suspect evidence that is collected nonsystematically and analyzed poorly, without correcting for the inherent weaknesses of observational data.

The second challenge this report poses is empirical. It uses a qualitative method called process tracing to better understand institutional engineering in Iraq. Rather than criticizing the process by which the constitution was drafted and the provision it contained, it analyzes the sources of that process and the arrangements that ensued. The report thus suggests that the evident failures of constitution making in Iraq were not the results of poor management, bad judgment, or any other error that could have been corrected. Rather, it suggests that institutional engineering in Iraq largely followed a script written by key actors who preferred partisanship to compromise, and

who never intended to be bound by any constitutional provision that was not entirely consonant with their parochial interests. Simply put, it was the existing structure of conflicts that motivated behavior and determined outcomes.

This special report thus raises the possibility that institutions alone do not have the stabilizing powers attributed to them. This conclusion does not necessarily condemn societies like Iraq to discord and dictatorship. Rather, it points us in a different analytical direction, away from institutional design and toward the resolution of the underlying conflicts.

Notes

1. Chappell Lawson, "How Best to Build Democracy: Laying a Foundation for the New Iraq," *Foreign Affairs* 82 (July/August 2003), 207.
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3. Alan S. Gerber, Donald P. Green, and Edward H. Kaplan, "The Illusion of Learning from Observational Research," in Ian Shapiro, Rogers M. Smith, and Tarek E. Masoud, eds., *Problems and Methods in the Study of Politics*, (Cambridge, U.K.: Cambridge University Press, 2004), 251-73.
4. An influential statement of the alternative hypothesis is Adam Przeworski, *Democracy and the Market: Political and Economic Reforms in Eastern Europe and Latin America*, (Cambridge, U.K.: Cambridge University Press, 1991), 51-56.
5. For a summary statement, see Arend Lijphart, "Constitutional Design for Divided Societies," *Journal of Democracy* 15 (April 2004), 96-109.
6. Brian Barry pioneered this critique more than thirty years ago, and defenders of the conventional wisdom have never offered a convincing rebuttal. See his "The Consociational Model and Its Dangers," *European Journal of Political Research* 3 (December 1975), 393-412.
7. Donald L. Horowitz, "Democracy in Divided Societies," *Journal of Democracy* 4 (October 1993), 36.
8. The claim that broader sociocultural conditions can undermine institutional rules was most famously made by Robert Putnam, *Making Democracy Work* (Princeton, N.J.: Princeton University Press, 1994).
9. This section relies heavily on the discussion in David Freedman, Robert Pisani, and Roger Purves, *Statistics*, 3rd ed. (New York: W.W. Norton & Company, 1998), Chapters 1 and 2.
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11. For details, see Christopher H. Achen, *The Statistical Analysis of Quasi-Experiments*, (Berkeley, Calif.: University of California Press, 1986).
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13. Jose Antonio Cheibub, *Presidentialism, Parliamentarism, and Democracy* (Cambridge, U.K.: Cambridge University Press, 2007), 136.
14. Erik Wibbels, "Madison in Baghdad? Decentralization and Federalism in Comparative Politics," *Annual Review of Political Science* (2006), 178.
15. These include Adeed I. Dawisha and Karen Dawisha, "How to Build a Democratic Iraq," *Foreign Affairs* 86 (May/June 2003), 36-50; Chappell Lawson, "How Best to Build Democracy: Laying a Foundation for the New Iraq," *Foreign Affairs* 86 (July/August 2003), 206-09; Daniel L. Byman and Kenneth M. Pollack, "Democracy in Iraq," *The Washington Quarterly* 26 (Summer 2003), 119-36; Daniel L. Byman, "Constructing a Democratic Iraq: Challenges and Opportunities," *International Security* 28 (Summer 2003), 47-78; Dawn Brancati, "Can Federalism Stabilize Iraq?" *The Washington Quarterly* 27 (Spring 2004), 7-21; Arend Lijphart, "Constitutional Design for Divided Societies," *Journal of Democracy* 15 (April 2004), 96-109; and Larry Diamond, *Squandered Victory: The American Occupation and the Bungled Effort to Bring Democracy to Iraq* (New York: Times Books, 2005).
16. Brancati, "Can Federalism Stabilize Iraq?," 15.
17. Dawisha and Dawisha, "How to Build a Democratic Iraq," 39.
18. Lijphart, "Constitutional Design for Divided Societies," 97-99.
19. Diamond, *Squandered Victory*, 317.
20. Nathan J. Brown, "Reason, Interest, Rationality, and Passion in Constitution Drafting," *Perspectives on Politics* 6 (December 2008), 675.
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22. International Crisis Group, "Unmaking Iraq: A Constitutional Process Gone Awry," Middle East Briefing No. 19 (September 26, 2005), 1.
23. Jonathan Morrow, "Iraq's Constitutional Process II: An Opportunity Lost," United States Institute of Peace, Special Report No. 155 (November 2005).

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27. See Ali A. Allawi, *The Occupation of Iraq: Winning the War, Losing the Peace* (New Haven, Conn.: Yale University Press, 2007), 62-76.
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30. Brian Katulis, March Lynch, and Peter Juul, "Iraq's Political Transition after the Surge: Five Enduring Tensions and Ten Key Challenges," Center for American Progress (September 2008), 20-21.
31. Ibid., 22.
32. On hedging and democratic stability, see Gerard Alexander, *The Sources of Democratic Consolidation*, (Ithaca, N.Y.: Cornell University Press, 2002).
33. For a local-level view of this process, see Mark Etherington, *Revolt on the Nile: The al-Sadr Uprising and the Governing of Iraq* (Ithaca, N.Y.: Cornell University Press, 2005), 78-86.
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37. Steven Simon, "The Price of the Surge," *Foreign Affairs* 87 (May/June 2008), 57-76.

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