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Sistani, the United States and Politics in Iraq

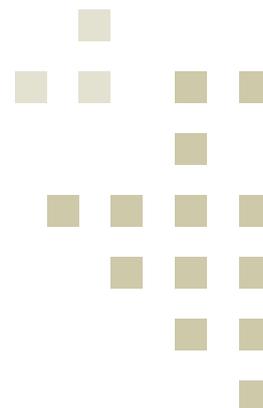
From Quietism to Machiavellianism?

Reidar Visser

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Besøksadresse: C.J. Hambros plass 2d
Adresse: Postboks 8159 Dep.
0033 Oslo
Internett: www.nupi.no
E-post: pub@nupi.no
Fax: [+ 47] 22 36 21 82
Tel: [+ 47] 22 99 40 00

Sistani, the United States and Politics in Iraq

From Quietism to Machiavellianism?

Reidar Visser

[Abstract] This paper discusses the two prevailing interpretations of the political attitudes of the Grand Ayatollah Ali al-Sistani, the leading Shiite cleric in Iraq today. It is argued that neither the traditional “quietist” paradigm nor more recent Machiavellian interpretations can satisfactorily explain Sistani’s actions. An alternative interpretation is offered which highlights Sistani’s historical oscillation between passive and activist positions. It is suggested that, after an activist intermezzo from June 2003 to December 2004, Sistani has reverted to a more secluded role, again showing an increasing reluctance to fulfil the wishes of his many wooers in Iraqi politics, and limiting his interference to matters directly connected with the Shiite faith and its institutions. It is concluded that Sistani’s professional interests as a cleric – rather than any constant desire on his part to control and manipulate domestic politics – may be the key to understanding any future intervention in the political process in Iraq. Scepticism is also expressed toward the notion of Sistani as a guarantor for a “moderate” or “secular” Iraqi political system that would supposedly be fundamentally different from that of Iran – an idea that has featured prominently in policy-making circles in the United States and in other Western countries currently involved in Iraq.

About the author

Reidar Visser is a research fellow at the Norwegian Institute of International Affairs. He has a background in history and comparative politics from the University of Bergen and a doctorate in Middle Eastern studies from the University of Oxford. His recent work includes the newly published monograph [Basra, the Failed Gulf State: Separatism and Nationalism in Southern Iraq](#) (New Brunswick, NJ: Transaction Publishers; Berlin: Lit Verlag) as well as several articles and research papers on the Iraqi transition process and the question of decentralisation in southern Iraq. Many of his publications are available at the website <http://historiae.org>

Introduction

On 25 April 2003, towards the end of the first phase of the Iraq War, Reuters journalists on duty in Najaf filed the following report of how local forces were adjusting to the realities of US occupation:

“The US forces say the city’s new mayor is a retired colonel in the Iraqi army – named Abdul Munim but also known as Abu Hadr – presiding over a council of elders including the moderate cleric Grand Ayatollah Ali al-Sistani. It was unclear how he became mayor. The US forces said only that he emerged as a leader over the past few weeks and was vetted by special forces who continued to ‘liaise’ with him. The Marines said they had held a few meetings with Munim, but wanted to maintain a hands-off approach. ‘I’m not here to run his government, I’m just here to allow him the freedom to be able to do it,’ said Lieutenant-Colonel Chris Conlin, commanding officer of 1st Battalion, 7th Marines.”¹

Few leading personalities of contemporary Iraq have been subjected to so much speculation, misrepresentation and blatantly false accounts as the Grand Ayatollah Ali al-Husayni al-Sistani of Najaf. Virtually unknown to the non-Shiite world before 2003, Sistani became the object of intense media interest after the outbreak of the Iraq War and during the subsequent process of establishing a new regime in post-war Iraq. As an understanding emerged of Sistani’s enormous influence among a huge segment of the Iraqi population, theories about the “political outlook” of the Najaf ayatollah started to multiply. The above quotation is but one of several examples; it is idiosyncratic in that it rather fantastically suggests that the world’s leading Shiite cleric would be happy to serve on a local council under the stewardship of an ex-Baathist US-appointed Sunni, but some of its other elements (like the vague idea of “moderation”) recur in Western news reports from Iraq. Every day, such reports are reproduced globally by powerful media voices – with enormous implications for the debate about Iraq and its future.

One of the two prevailing interpretations of Sistani renders him as “quietist”. By this label is meant roughly that Sistani has no interest in politics, that he has a religious justification for this position ready at hand, and that he is particularly anxious to avoid any kind of convergence between the new Iraq and the Islamic republic of Iran, where the Shiite clergy are tightly integrated in the state structure. Most versions of the quietist depictions ascribe some kind of ill-defined “non-radicalism” to Sistani; certain variants even go as far as to suggest that the ayatollah prefers the complete separation of religion and politics and of “church and state”, almost as per the modern Western secular ideal. In some form or another, this interpretation of Sistani – perhaps minus the claims about his secularism – had become the dominant in Western scholarly circles and indeed among many Shiites living outside Iraq by the time the Iraq War began in 2003.² It has probably been a sustaining factor in many of the rosier vi-

¹ Quoted from Christine Hauser and Matthew Green, “Iraqi Shiites Say Ruling Najaf, Ignore US Troops”, Reuters, 25 April 2003.

² See for instance Chibli Mallat, *The Middle East into the 21st Century: Studies on the Arab–Israeli Conflict, the Gulf Crisis and Political Islam* (Reading: Ithaca Press, paperback edition, 1997), p. 156. On the strength of quietism more generally, accusations and counter-accusations about different kinds of biases fly between friends and foes of the Iranian revolution. For an account which singles out the quietist direction as the mainstream current, see Moojan Momen, *An Introduction to Shi’i Islam* (New

sions of how a pro-Western new Iraq could function, including the idea that the country could come to emulate the secular principles of Turkey or Malaysia, and that Islamic sentiment among the Iraqis would be sufficiently catered for by a few constitutional ornaments – like stipulations that the head of state be a Muslim, or guarantees for keeping Friday as the official holiday.³ Most of all, Sistani’s “quietism” was seen as a guarantee that no polity along the lines of Iran’s Islamic republic would see light in the new Iraq.

After 2003, it has become clear that somehow Sistani does in fact play a formidable role in Iraqi politics, and the adequacy of the “quietist thesis” has come under strain. A counter-stereotype has emerged, in which Sistani is rendered as a figure with quasi-Machiavellian qualities. All ideas about the Shiite clergy being subjected to restrictions as regards their political role are scrapped; instead Sistani is seen to be working consciously behind the scenes to maximise his own power and that of his Shiite followers in Iraq, even through alleged demands for autonomous areas.⁴ The activities of the Shiite clergy in Iraq are thus effectively reduced to a one-dimensional quest for a maximum of sectarian political power – and ideas about heavy Iranian involvement behind the scenes feature frequently. Shiite political leadership in Iraq is often portrayed as a duumvirate consisting of Sistani and Abd al-Aziz al-Hakim of the Supreme Council of the Islamic Revolution in Iraq (SCIRI), with Sistani providing religious legitimacy and Hakim making sure it gets translated into electoral success. The imaginary fusion of Sistani and Hakim into a single political force has had the additional effect of making debate about the post-war transition in Iraq more vulgar, as Hakim’s pro-sectarian ideas often are simplistically construed as representing the collective will of all Shiites.⁵

The argument in this paper is that both prevailing interpretations of Sistani are problematic – because they are based on questionable sources. In essence, the upsurge of media interest in Iraq since 2003 has meant that basic rules of evidence have been sacrificed on the altar of real-time news. The formats prevailing in today’s media industry demand a level of brevity and assuredness quite incompatible with Sistani’s low-key, irregular and reticent style; this situation has in turn led journalists frustrated with the dearth of news from Najaf to practically invent stories about its leading ayatollah. The result is that gossip and hearsay are elevated to primary-source status and often end up forming the basis for highbrow discussions about Iraqi politics. For serious journalism in any field, such practices would be dubious. For analyses of an individual who has specifically stated that only documents furnished with his own office seal are to be trusted, this represents an extraordinary loss of factualness.

Who produces the media image of Sistani? It is often not realised that for news from Iraq, much of the world relies on a brave but not very numerous corps of journalists whose ventures beyond the Green Zone in Baghdad can, by their own admission, be uneasy and infrequent affairs. Unable to get that coveted “Sistani interview”,

Haven: Yale University Press, 1985); conversely, Abdulaziz Abdulhussein Sachedina stresses the pre-modern roots of the *wilayat al-faqih* concept in *The Just Ruler in Shi’ite Islam: The Comprehensive Authority of the Jurist in Imamate Jurisprudence* (New York: Oxford University Press, 1988). Sachedina makes the case that the fundamental principles of the revolutionary Iranian state are much less of a novel innovation than Momen claims.

³ For suggestions along these lines, see for instance Paul Bremer’s responses to journalists at an Iraq reconstruction update briefing, 26 September 2003; Tom Regan, “US State Department’s ‘Charm Offensive’ Hits Bumps”, *Christian Science Monitor*, 24 October 2005.

⁴ For a typical example, see Christopher Dickey, “Make or Break”, *Newsweek*, 10 November 2004.

⁵ Reidar Visser, “Beyond SCIRI and Abd al-Aziz al-Hakim: The Silent Forces of the United Iraqi Alliance”, 20 January 2006, <http://historiae.org/UIA.asp>

they have chosen instead to focus on a heterogeneous mass of individuals whom they variously describe as the ayatollah's "advisers", "representatives" or "aides". These terms are loosely and inconsistently applied to anything from the ayatollah's own peers to people who are essentially office clerks – and, given the preponderance of the latter, news reliability for items of this description tends to be poor. Satellite television stations have developed a similar strategy: eager to acquire exclusive information about Sistani, they never tire of interviewing a select group of trusted dragomans believed to possess the keys to his inner consciousness. Often these individuals' actual "contact" with the ayatollah may be limited to a handful of audiences in the past, or worse, are inferences based on knowledge about his predecessor and teacher, Ayatollah Abu al-Qasim Khoei. Importantly, tendencies of this kind are not in any sense restricted to the Western media. Those (surprisingly few) Arabic dailies and television stations that do produce their own stories from Iraq have proven themselves susceptible to many of the same predilections; in some cases, Sunni or pan-Arab nationalist biases make them especially prone to sensationalism about the Shiite clergy.⁶ (In fact, even some of the biggest Iraqi dailies rely heavily on mechanically translated AP and AFP newswire reports.)

The notion of "Sistani advisers" merits particularly close attention, as this category recurs in reports purporting to bring revelations about Sistani's political views. Most people quoted under this description are actually district *wakils* – "representatives" or "agents" of the grand ayatollah. Their job is to help him with all sorts of practical things: the verbatim communication of his fatwas to local Shiite congregations; collection of religious taxes; verification that the implementation of charity work is done according to Sistani's instructions.⁷ While many of them are authorised to issue judgments in basic personal law cases, they have no influence on Sistani's rulings; any suggestion of such influence would throw into question one of the pillars of orthodox Shiite Islam by which jurists (*mujtahids*) trained in legal interpretation (*ijtihad*) enjoy a sort of guild monopoly vis-à-vis the laity, and independently arrive at their own legal opinions. This fundamental Shiite dichotomy between qualified jurists and the rest of the people who "imitate" them (*muqallids*) is clearly at variance with the idea of a two-way "consultation" process implicit in the use of English terms like "advisers".

This is not to suggest that Sistani makes his deliberations in perfect solitude. Clearly there are persons who control the flow of information to his office and his financial affairs; these few but powerful individuals could to a greater extent than the rest of the Sistani bureaucracy be privy to his political ideas. They include his son Muhammad Rida and two of his *wakils* who are also his in-laws, Murtada al-Kashmiri (London representative) and Jawad Shahrastani (head of Sistani's Iran office in Qum,

⁶ Often, some of the most interesting foreign journalism about Iraqi Shiism appears in smaller newspapers in countries like Lebanon and Kuwait. In many cases, the staff of these publications have excellent personal contacts in Iraq. In the mainstream pan-Arab media, an increasing sense of resignation and sometimes nonchalance towards the Iraq situation has become noticeable over the past two years. At a leading satellite television station like al-Jazeera, live coverage of such key events as the completion of the constitutional draft and the announcement of the final results of the December 2005 elections were both brusquely cut off and the channel returned to its programmed schedule.

⁷ Linda S. Walbridge, "The Counterreformation: Becoming a Marja' in the Modern World", in Walbridge, ed.: *The Most Learned of the Shi'a: The Institution of the Marja' Taqlid* (Oxford: Oxford University Press, 2001), p. 233. For the historical background, see Yitzhak Nakash, *The Shi'is of Iraq* (Princeton: Princeton University Press, 1994), p. 46; S.M. Salim, *Marsh Dwellers of the Euphrates Delta* (London: Athlone Press, 1962), p. 64.

which operates Sistani's main internet sites).⁸ But to rely uncritically on anyone who claims to "represent" Sistani would mean seriously underestimating the degree of hierarchy and subordination at work within the Shiite socio-religious system.

A certain degree of caution must be exercised even in those few media reports that actually do feature clerics from the exclusive set of qualified *mujtahid* jurists.⁹ Because of the emphasis on "independence" in Shiite legal reasoning, claims about collegiate decision-making are prima facie suspect. Rather than acting as Sistani's consultants, clerics who share his status as *mujtahid* tend to pursue careers of their own, with separate networks of *muqallid* followers (or, in the shrine cities, students) who look to them for religious and legal guidance – and who provide them with their chief source of income.¹⁰ This practice is consonant with the particular sort of hierarchy that operates at the elite level in Shiite Islam: far from forming a pyramid-like structure with a formal synod or an advisory consistory of cardinals, the clergy maintain a certain first-among-equals logic to those recognised as the "leading" men of religion and tend to coalesce into larger groups only in times of crisis.¹¹ Junior ulama may well sit on the "fatwa boards" of their seniors, but it would be more unusual for established *mujtahids* to sacrifice their own interests and submissively enter into the service of a colleague (which is what many of the reports on Sistani "advisers" implicitly postulate.) Even though Shiism attaches great weight to ideas of pre-eminence and paramountcy through the theoretical concept of a single "most learned" *mujtahid* who can act as a model of emulation for the entire Shiite world (*marja' al-taqlid*), it also bestows on the *muqallids* the fundamental right to decide for themselves, individually, whom they would like to adopt as their *mujtahid*. This tenet is conducive to scholarly pluralism and competition instead of sharply stratified power clusters sloping upwards towards a single cleric. It also leaves those who can be rightly described as "Sistani advisers" as a rather small and residual category.¹²

The alternative approach proposed in this paper is two-fold. Firstly, it may be necessary simply to downgrade expectations and adopt more modest aims as to what is really possible to know about Sistani's political views. Secondly, it is worth following the advice on sources provided by the study object himself: focus on documents which carry Sistani's office seal, and on his published works. With regard to books, most of Sistani's work was published in the 1990s, and these pieces of scholarship generally eschew the subject of politics altogether. Particularly central as sources are therefore Sistani's fatwas and other public pronouncements (*bayans*), which since 2003 have become his main instruments of communication with the outside world. In

⁸ The notion "the eyes and ears" of the *mujtahid* has been suggested; Walbridge, "Counterreformation", p. 233.

⁹ It is difficult to quantify this stratum of the clergy precisely, but the scarcity of *mujtahids* is suggested by the considerable difficulties experienced by Muqtada al-Sadr (himself a non-*mujtahid*) in finding a suitable *mujtahid* patron for the movement he inherited from his father, the *mujtahid* Muhammad al-Sadr. He eventually entered into a pro forma alliance with an Iraqi cleric based in Iran, Kazim al-Hairi.

¹⁰ The usual complaint of "reformers" has been precisely that the Shiite leadership is too polycephalous and speaks with too many voices. But these reformist attempts have generally been deflected by a clergy eager to maintain their own established position.

¹¹ The notion of the leading *mujtahids* of Najaf as a "band of four", operating in perfect coordination, has become widespread in the media. Historical evidence suggests that such unification of the religious leadership tends to be ephemeral and is unlikely to rock the fundamental *mujtahid/muqallid* dichotomy. See Meir Litvak, *Shi'i scholars of Nineteenth-Century Iraq: The 'Ulama' of Najaf and Karbala'* (Cambridge: Cambridge University Press, 1998), p. 110.

¹² A grey-zone category is made up of a limited number of individuals described as *muhtat* – they possess certificates (*ijazas*) for practising *ijtihad* but do not pursue careers as *mujtahids*. Fadil Jamali, "The Theological Colleges of Najaf", *The Muslim World*, vol. 50 no. 1 (1960), p. 19.

fact, Sistani has repeatedly denounced most other methods for ascertaining his views: In October 2003 he specifically declared that statements purporting to represent his views but lacking his office's seal or signature should be considered as "merely the personal views of those who express them";¹³ in January 2004 he repeated this warning and once more specifically dismissed the validity of statements issuing from Sistani "representatives", "assistants", and "*wakil* agents".¹⁴ (For unverifiable *bayans* attributed to Sistani but known solely via secondary reports in the press, Sistani's Qum office replies that the pronouncements published on his website are the genuine and official ones.¹⁵) Sources from Sistani's "bureaucrats", if used at all, should be accompanied by some reflections on the exact status of the particular "advisers" quoted.

An analysis based on this selection of sources reveals a picture that fits neither the "quietism thesis" nor the Machiavellian paradigm for understanding Sistani. Instead, three distinctive periods in his career emerge. First, in the period before June 2003, Sistani stayed loyal to the orthodox, non-political approach associated with his mentors of the "quietist" school. Then, between June 2003 and November 2004, he switched to a far more activist modus, profoundly affecting the process of transition in Iraq and in particular the organisation of elections. But from December 2004 and until today, there has been evidence of a return to seclusion and a renewed preoccupation with matters concerning the Shiite faith and the protection of its religious infrastructure. Sistani's oscillation between these very different *modi operandi* and its implications for Iraq's politics and future direction form the main focus for the discussion that follows.

The orthodox approach to politics: before June 2003

Requests for "a primer by Sistani on his political views" are commonplace these days; the problem is that no such convenient volume exists.

Catching sight of "the state" in Sistani's scholarship is in itself quite challenging. His publications are replete with guidance for how individuals should relate to society more generally, advising readers in meticulous detail on matters like personal hygiene, food preparation and sexual relationships. The zeal for providing a holistic Islamic codex is such that religious injunctions are offered with relevance to almost every single orifice of the human body. But politics has no place in this lexicon. Issues like those intractable questions in Iraqi politics – decentralisation and federalism – do not receive any attention at all.

The reason for this is that "the state" is an inherently problematic concept in Shiite Islam. This is a peculiarity of Shiism that does not arise in the Sunni branch, where in theory no human individual enjoys any particular distinction above others and the striving to create an Islamic state in accordance with Islamic law is a natural and incontrovertible aspiration for all. In Shiism this is quite different, because of the belief in a line of infallible imams who succeeded the Prophet to act as liaisons between God and mankind – until the twelfth of these imams disappeared and entered into a state of occultation in the ninth century AD. According to Shiite doctrine, supreme political authority on Earth rests with this Hidden Imam, meaning that any Shiite ventures into politics carry the potential of usurpation.

¹³ *Bayan* dated 20 Shaban 1424/17 October 2003.

¹⁴ *Bayan* dated 30 Dhu al-Qada 1424/23 January 2004.

¹⁵ E-mail from Sistani's Qum office dated 30 Dhu al-Qada 1426/1 January 2005.

Since the early twentieth century, one line of thought within Shiism has negotiated this problematic issue and formulated theories that allow for clerical involvement in politics: either by forming a veto-wielding supervisory body to control modern legislatures (as seen in the constitutional revolution movement in Persia in the decade before the First World War), or by producing a “just ruler” from among the *mujtahids* who himself can seize power and create an Islamic state (Ayatollah Ruhollah Khomeini’s modernist project of *wilayat al-faqih*, “the rule of the jurisprudent”). But these innovations never succeeded in completely supplanting the more traditional approach, to which many of the ulama, particularly those outside Iran, continued to subscribe. Among those traditionalists were most of the leading clergy of Iraq, including Ayatollah Khomeini, until his death in 1992 considered the Shiite cleric with the largest following worldwide. When he died, many of Khomeini’s followers turned to Sistani (a Khomeini student during the 1950s, and like Khomeini a native of Iran), who during the 1990s grew to become the most popular *mujtahid* in the Shiite world – a situation seen by many as a perpetuation of Khomeini’s traditionalism in questions involving politics.

The apolitical tradition has certainly made its mark on Sistani’s writings. In much of his prescriptive literature, society seems nearly stateless. The relationship between follower and jurist¹⁶ takes centre-stage; situations that involve forces external to this two-way relationship are rendered almost as unwelcome disturbances of an ideal state of affairs. In Sistani’s model, Shiite believers ask questions about everything from rituals of ablution to the use of recreational drugs or listening to music; the *mujtahid* provides answers. The state, if visible at all, is in the far background.

And yet “the state” crops up every now and then in Sistani’s writings. In a work on Islamic pilgrimage from the 1990s, Sistani raises the question of how to relate to the common practice in Islamic countries of state regulation of pilgrim quotas. Is this to be considered legitimate? The answer is qualified: if the state behaves in a “just manner”.¹⁷ Elsewhere he explicitly posits the *mujtahid* as a kind of supreme appeal judge in disputes between a citizen and the state, for instance when he discusses whether a government offer of paying someone the cost of a pilgrimage (*hajj badhali*) via a religious or charitable foundation makes it incumbent on the recipient to take up the offer.¹⁸ Such cases depend on whether a *mujtahid* has specifically approved the financial transactions involved.

But again in other cases Sistani does seem to extend a degree of trust, if not necessarily legitimacy, to the established states in the Muslim world. Is meat whose packaging is marked as “*halal*”¹⁹ fit for consumption by Muslims? Sistani patiently explains that the text on the package has no value as such.²⁰ But the meat may be eaten, “if the producer is a Muslim *or it was produced in a place where Muslims are in the majority* and it is not known that the producer is a non-Muslim [italics added]”. The underlying assumption is that in “places where Muslims are in the majority”, Islamic procedures for slaughtering animals have been instituted at the level of society so that

¹⁶ This is often rendered as “the legitimate judge” (*al-hakim al-shar‘i*), but Sistani elsewhere explicitly states that this is synonymous with a *mujtahid*, see for instance the glossaries available at www.sistani.org

¹⁷ Ali al-Husayni al-Sistani, *Manasik al-hajj* [Rituals of the Hajj pilgrimage] (1992), internet edition, vol. 2, appendix, at question no. 13. This and the subsequent example show that Sistani is not merely discussing an abstract ideal-type Islamic polity; he admits the possibility of “the state” acting unjustly.

¹⁸ *Ibid.*, at question no. 14.

¹⁹ Slaughtered according to Islamic procedure.

²⁰ “Al-ma’kulat wa-al-mashrubat” [Food and drink], in Ali al-Husayni al-Sistani, *Fiqh li-al-mughtaribin* [Islamic jurisprudence for those (Muslims) living in the West], 1998, internet edition.

no further investigation about the provenance of a “*halal*”-marked piece of meat is required. Still, this is a far cry from a positive theory of the state. It is only by way of implication that Sistani singles out “Muslim countries” as societal systems where certain collective norms sustain an Islamic way of life. There is the occasional hint of the chaos that might ensue if no government had existed at all, but while this may leave “the preservation of the system” (*hifz al-nizam*)²¹ as a virtue in itself, no taxonomy of such systems follows.

The contrast to this setting is the “non-Muslim country”. Sistani has written extensively on the subject of Muslims living in exile in Western countries, and his practical advice provides interesting insights into the contrasting category of an ideal “Muslim state” that emerges by implication – perhaps more vividly so than the unmarked category of “the state” which lurks in the background in some of his writings geared towards audiences in Muslim-majority areas. Thus, in a non-Muslim country, Muslims may in some cases break the (local) law without committing a crime according to the Islamic code of conduct. This is so because the non-Muslim state has no legitimacy in itself, according to Sistani. Quite different considerations govern Sistani’s reasoning about these matters. Traffic laws are to be obeyed, *because non-observance would lead to accidents*.²² No-smoking signs on public transport are to be observed *if they can be considered part of a contract for fare-paying passengers*.²³ Tax evasion is permissible *unless the general reputation of Muslims is harmed*.²⁴ In all of the cases, Sistani identifies pragmatic or distinctly Islamic justifications instead of paying any attention to the Western laws as such. There is no doubt about the ulterior motive: this guidance is offered so that Muslims be able to lead their lives according to “the noble principles of the Islamic Sharia”.²⁵

Questions about transgressing the law of the land are far more in the background in Sistani’s writings on “Muslim countries”. There is less discussion of how to deal with abusive government, high-handed bureaucrats or oppressive tax regimes, and where it occurs it is less systematic than in Sistani’s discussion of the non-Muslim setting.²⁶ And contrary to the situation in Western countries, where special care must be taken to avoid straying from Islam in what is construed as a particularly dangerous environment, many considerations and precautions can apparently be set aside in Muslim countries. It is hard to find close parallels to the warning against unnecessarily interacting with government officials or the police, or to the idea that a particular environment (e.g. a geographical area, or a particular social milieu) could conceivably corrupt an individual to the point where his or her integrity as a good Muslim would

²¹ On the salience of this point in Shiite thought, see Abdul-Hadi Hairi, *Shi‘ism and Constitutionalism in Iran: A Study of the Role Played by the Persian Residents of Iraq in Iranian Politics* (Leiden: E.J. Brill, 1977), pp. 193–194.

²² Sistani, *Fiqh li-al-mughtaribin*, at “Al-ta‘amul ma‘a al-qawanin al-nafida fi duwal al-mahjar” [Dealing with the laws in force in the country of exile].

²³ *Ibid.*

²⁴ Undated fatwa on “taxes” (*dara’ib*) from www.sistani.org. It is noteworthy that this fatwa does not appear in the English- and French-language sections of the website despite being of particular relevance to Shiites in exile.

²⁵ “Epilogue” in Ali al-Husayni al-Sistani, *A Code of Practice for Muslims in the West* (English-language internet edition of *Fiqh li-al-mughtaribin*).

²⁶ An example is the discussion in *Minhaj al-Salihin* (1993) pp. 17–18; this is in the context of general rules for “trade”, and largely based on Abu al-Qasim Khoei’s work with the same title (Beirut: Dar al-Balagha, 1992), part 2, pp. 10–11.

come under threat.²⁷ This can mean only that “the state” in these areas is seen as one of the upholders of those Islamic principles – or at least that it ought to be so.

During the 1990s Sistani never moved towards a more explicit and comprehensive description of a governmental framework for the Islamic universe he so meticulously codified. This was paralleled with extreme caution in the arena of practical politics, where he limited his other public communications to non-controversial affairs. An April 2002 condemnation of a particularly violent Israeli offensive on the West Bank was one of Sistani’s few public communications to touch on politics at all.²⁸ There were two subsequent statements warning Western powers against intervening in Iraq – published in September 2002 and March 2003 respectively – but it is almost impossible to gauge the level of regime pressure at work in these episodes.²⁹ Sistani was subjected to harsh conditions and at times lived under effective house arrest during the authoritarian rule of the Baath.

Shortly after the fall of the Baathist regime in 2003, Sistani could for the first time issue statements to his followers without fear of government reprisals. “The state” is present in these writings, and perhaps more clearly now if compared to his former scholarship. Sistani was quick to condemn theft of “government property”, even though the former regime had brutally oppressed the Shiites, and the new one was effectively controlled by a US administrator.³⁰ And he soon went further than this in a succession of fatwas designed to deal with the wartime chaos. Can government-owned wasteland be seized and put into production? Not without reference to “the relevant responsible authorities” (*al-jihat al-mas’ula dhat al-salahiya*).³¹ Would it be legitimate to retake property once owned but stolen by the old regime? Only after consultation with the “relevant department” (*al-da’ira al-mu’ayyana*).³² Are Shiites at liberty to do as they please with antiquities stolen from the Iraq Museum in the wake of the fall of Baghdad? No, these objects are to be returned to the museum.³³ The string of new concepts in Sistani’s vocabulary relating to an idea of “responsible government” represents a development from his former preoccupation with the bilateral *mujtahid/muqallid* relationship. A third party, “the state”, is now clearly acknowledged as an explicit part of the system. In fact, Sistani’s deference to the state has at times an almost my-country-right-or-wrong quality to it, even though at that point the Iraqi government’s “Islamic” character was by no means secure.

Sistani’s preparedness to extend legitimacy to “the state” was thus clear. At the same time, there was no indication that he had abandoned his theoretical goal of

²⁷ Sistani, *Fiqh li-al-mughtaribin*, at “Al-hijra wa-al-dukhl ila al-buldan ghayr al-islamiyya” [Emigration and entry into non-Muslim countries].

²⁸ *Bayan* dated 26 Muharram 1423/9 April 2002.

²⁹ Neither statement features on Sistani’s website, though a translated CNN report on the one from September 2002 is included in a collection of “press clippings” as “Fatwa mansuba li al-shaykh al-sistani hawla al-‘iraq” [Fatwa attributed to Shaykh al-Sistani about Iraq]. The pro-US statement ascribed to Sistani during the early days of the Iraq War is similarly nowhere to be found in a verifiable condition and remains highly controversial, see Reidar Visser, “Shi’i Perspectives on a Federal Iraq: Territory, Community and Ideology in Conceptions of a New Polity” in Daniel Heradstveit & Helge Hveem, eds., *Oil in the Gulf: Obstacles to Democracy and Development* (Aldershot: Ashgate, 2004), pp. 137–138.

³⁰ One of Sistani’s earliest and most comprehensive post-war pronouncements is in the grey-zone area with regard to the formal criteria for authenticity. It was circulated by Sistani’s London office and widely published in the Arab media (see for instance *al-Hayat*, 20 April 2003), but on Sistani’s website appears only in the English-language version.

³¹ Fatwas on “state property” (*amwal al-dawla*) from www.sistani.org. See also fatwas dated 18 Safar 1424/20 April 2003 and 25 Safar 1424/27 April 2003.

³² *Ibid.*, fatwa on “state property”, no. 4.

³³ Fatwa on museum property dated 14 Rabi al-Awwal 1424/16 May 2003.

achieving a society governed according to Islamic law. Indeed, some of his early post-war fatwas point explicitly towards a future Islamic regime – a certain development from his earlier writings where he in cases requiring adjudication had mostly resorted to an elusive “legitimate judge” or *mujtahid* (who could well be suspected of belonging to an imaginary Shiite surrogate state rather than to the government proper). But by 2003 there were signs of something more elaborate and state-like, as when he tackled the question of revenge against Baathist officials for relatives killed in the past: vigilantism would be unacceptable; these matters must wait until “a legitimate court (*mahkama shar‘iyya*) set up to deal with these issues” had been “established”.³⁴ The big question was whether Sistani himself would do anything in practice to attain the ideal of an Islamic state – a move that would imply a drastic change of the traditionalist apolitical position.

By May 2003 no such signs were evident. In one fatwa, dated 20 April, Sistani had specifically warned clerics against seeking political office, making a point of “confining” their role to providing “general advice”.³⁵ And no coherent and comprehensive “advice” on post-war transitional issues appeared to be forthcoming anyway, apart from very general suggestions presented in passing in his fatwas about forming local committees to keep the peace and prevent the proliferation of small arms.³⁶ Western observers could confidently reiterate the “quietist thesis” in this period. Some went even further. Amir Taheri claimed that Sistani would become a leading figure in an anti-political schismatic movement within Shiism – an open rejection of the Iranian model of a politicised clergy, inspired by the realisation that it would be impossible to create “the perfect society in the absence of the Hidden Imam”.³⁷ Karen Armstrong suggested that the new regime in Iraq would be characterised by a “traditional Shiah secularism” which had emerged historically because the “Shiahs had privatised faith, convinced that it was impossible to integrate the religious imperative with the grim world of politics that seemed murderously opposed to it”.³⁸ But on 26 June 2003, some three months after the outbreak of the Iraq War, all this changed. On that day, Sistani’s office in Najaf issued a pronouncement that was to radically challenge the image of a passive and esoteric scholar holed up in his study, inaccessible to the outside world and aloof from it.

Forays into politics, June 2003–November 2004

Between June 2003 and November 2004, Sistani entered Iraq’s political stage. In a stunning emergence from his Najaf shell, the ayatollah suddenly behaved like an experienced statesman – providing direction for the process of transition in Iraq, entering into dialogue with the international community, and forcing the United States to rethink some of its policies. Completely abandoning his traditional formats of fatwas and *bayans*, he picked up more standard diplomatic techniques and in a matter of months transformed his Najaf home into the country’s most important port of call for

³⁴ Fatwa on treatment of former government officials dated 14 Rabi al-Awwal 1424/16 May 2003.

³⁵ Fatwa dated 18 Safar 1424/20 April 2003.

³⁶ The April pronouncement via his London office, quoted above, was probably Sistani’s most systematic presentation of guidelines. It is noteworthy that this document contained another act of deference to existing state structures as Sistani painstakingly used the established Iraqi nomenclature for referring to “governorates”, “districts” and “subdistricts”.

³⁷ Amir Taheri, “Shiite Schism”, *Wall Street Journal*, 8 April 2003.

³⁸ Karen Armstrong, “Faith and Freedom”, *The Guardian*, 8 May 2003.

aspiring political leaders. The Iraqi scene was taken by storm; internationally the Holy See and other religious institutions with political ambitions must have watched with both amazement and envy.

The 26 June fatwa which so dramatically broke Sistani's silence in politics was brief and simple. The questioner³⁹ stated, "the occupying power has declared its intention to create a council to write the new Iraqi constitution, and that it would appoint its members in a process of consultation with political and social forces in the country before it is put to a referendum", and went on to request Sistani's advice in the matter. All of a sudden, Sistani the politician emerged, acute and crisp. "Those authorities", he remarked, "have no mandate to appoint the members of the assembly charged with writing the constitution". He then went on to sketch out the ideal procedure as he saw it: a general election in which every Iraqi would vote for representatives to a constituent assembly, followed by a general referendum over the proposed constitution. Sistani added that "all believers" ought to insist on this procedure – thereby making it clear that not only was he now entering political science, he was actually drawing up political imperatives for his followers.⁴⁰

In a string of public statements over the following half-year, Sistani essentially repeated this message.⁴¹ The 15 November 2003 agreement between the Iraqi governing council and the Coalition Provisional Authority (CPA) seemed to go some way towards meeting Sistani's demands, in that it scrapped the idea of an appointed constituent assembly, thereby closing a chapter which had started in August with a tentative and preparatory constitutional committee and optimistic assessments by US officials that a new charter would be at hand within six months. But Sistani went on to protest about the CPA's unwillingness to hold elections immediately and warned that a non-elected interim government would enjoy no legitimacy. He soon identified the United Nations as the sole legitimate external force in Iraq, and consulted with a UN delegation charged with investigating the possibilities for holding early elections in Iraq. The UN held that such early elections would be impracticable, but Sistani chose to focus on their argument for holding elections as soon as possible, with "the end of 2004 or a few months thereafter" suggested as a realistic alternative. This would mean speeding up the process by a couple of months and abandoning the 15 March 2005 deadline originally agreed with the CPA. At the same time, Sistani stressed the UN's role as a guarantor for this arrangement to be put into practice.

Not only did Sistani seek to repeat his basic message in this period, he also found new instruments of expression. Much of his communications in the autumn of 2003 and in early 2004 in fact took the form of written answers to requests from the international media (including CNN, Fox News, the Associated Press and *Der Spiegel*) in which he provided variants of the argument for instant elections while also delivering more ad hoc comments on various topical questions. He subsequently published the correspondence as *bayans*. At one point, after a visit by the Iraqi Sunni politician Adnan al-Pachachi, he even issued a regular press release.⁴²

³⁹ Fatwas or legal opinions usually take the form of a reply to an answer which *muqallid* members of the Shiite community have submitted in order to obtain guidance in a matter where the *mujtahid's* published works are mute or inconclusive.

⁴⁰ Fatwa dated 25 Rabi al-Thani 1424/26 June 2003.

⁴¹ *Bayans* containing written answers given to journalists, dated 21 Shaban 1424/18 October 2003, 27 Shaban 1424/24 October 2003, 3 Shawwal 1424/27 November 2003, 13 Dhu al-Qada 1424/6 January 2004, 18 Dhu al-Qada 1424/11 January 2004. The subsequent discussion is based on these documents.

⁴² See the *bayan* of 18 Dhu al-Qada 1424/11 January 2004 quoted above.

But Sistani's venture into politics did not stop with the UN report and the promise of elections. In the following months he repeatedly stressed the view that a non-elected interim government would lack legitimacy. Gradually, he also became more specific and revealed further political priorities. When the governing council was preparing to adopt the Transitional Administrative Law (TAL) in March 2004, he objected strongly, first reiterating the now familiar argument that an appointed body had no authority to legislate for the Iraqis. Moving beyond the controversy over elections versus appointments, he specifically complained that the TAL would hinder the process of making a constitution that could "preserve the unity of the country and the rights of all its sons of all ethnic groups and sects".⁴³ After several days' delay, the law was in fact endorsed by Iraq's politicians, but the Shiites signed only after having declared their reservations and their long-term ambition of changing it.

Sistani's subsequent actions should leave little doubt as to exactly what aspect of the code he found most inflammatory. Further expanding his political repertoire, he entered into correspondence with UN special representative Lakhdar Brahimi to complain about stipulations in the TAL that designated a collective presidency with a pre-set ethno-sectarian structure – an arrangement that in Sistani's view would enshrine sectarian and ethnic divisions (*yukarrisu al-ta'ifiyya wa-al-'irqiyya*) in Iraqi society.⁴⁴ He issued a warning that the TAL should never be mentioned in any Security Council resolution, a point which he restated in a letter to the UN in June,⁴⁵ shortly before the adoption of Security Council resolution 1546 on Iraq, and in the context of growing Kurdish demands for precisely such international recognition of the transitional law. In the event, the UN did heed Sistani's advice and refrained from mentioning the TAL.

Much has been made of Sistani's intervention regarding the TAL. In particular, many Kurds saw it as an attack on the constitutional referendum veto rights allotted on a governorate basis in that law, in which a two-thirds "no" vote in any three governorates would suffice to torpedo a charter draft. Complaints about "the tyranny of the minority" proliferated in the Iraqi media at the time, and Sistani was widely thought to be unsympathetic to the idea that small factions should have the power to reject a law favoured by more than half of the population. In his written statements, however, no such specific attack against the Kurds or the contested paragraph (61C) can be found. Rather, Sistani militates on a more general level against any kind of ethno-sectarian polity where the distribution of seats and ministries is done on the basis of language or religion. What he does specify is what he considers to be the danger of such arrangements: fragmentation and partition (*al-tajzi'a wa-al-taqsim*).⁴⁶ This leaves an emphatically Iraqist and anti-sectarian imprint on his demands for democracy – a trademark feature also seen in other writings where he consistently avoids talking of sectarian subdivisions, focusing instead on "non-Muslims" in discussions of minority rights in the constitutional context.⁴⁷ In a similar vein he has invariably resisted the temptation to adopt a more openly pro-Shiite sectarian tone, even in the pe-

⁴³ *Bayan* dated 16 Muharram 1425/8 March 2004.

⁴⁴ *Bayan* dated 27 Muharram 1425/19 March 2004. This letter is interesting in that for once some of Sistani's argument clearly seems to stem from outside sources: the poor track record of the TAL in "opinion polls" is mentioned alongside the more theoretical objections.

⁴⁵ Sistani's Najaf office to the Security Council, 17 Rabi al-Thani 1425/6 June 2004.

⁴⁶ *Bayan* dated 27 Muharram 1425/19 March 2004.

⁴⁷ See for instance his written answers on constitutional issues published in *al-Zaman*, 19 August 2003, and *bayan* dated 24 Dhu al-Hijja 1424/15 February 2004.

riod after 2004, when the terror campaign against the community by Sunni extremists intensified.

The climax of Sistani's campaign for democratic elections in Iraq came in October 2004. His manoeuvres were now beginning to yield results. The elections had been rescheduled for January 2005, and many Shiites stuck to this deadline as a sacrosanct date. As preparations for the vote got underway, Sistani issued another fatwa that was to have an enormous impact.⁴⁸ In response to a question as to how his followers should relate to the process of voter registration, he firmly emphasised the virtue of participation, stressing that all eligible voters must take steps to ensure that they were properly registered. In conclusion he reiterated his hope that "all Iraqis" would participate in the elections. From that point onwards, the act of participating in the elections was considered a religious duty by many devout Shiites. This was a top-level clerical commitment to participatory democracy unparalleled in earlier Iraqi history.

Concurrently with his intervention in Iraqi politics in this period, but in a far more low-key style, came a second development that is relevant for understanding Sistani's attitude to politics: an increased discussion about the ayatollah's attitude to Khomeini's principle of the rule of the jurist (*wilayat al-faqih*) – the doctrine that vests all political authority of the Shiites worldwide in the hands of a single paramount cleric who, pending the return of the Hidden Imam, will guide the community in temporal and spiritual affairs alike. Prior to 2003, the standard answer about Sistani and *wilayat al-faqih* was that the Najaf cleric maintained the sceptical attitude of his predecessor, Ayatollah Khomeini. Some statements by his leading representatives outside Iraq could be seen to support this interpretation, and Sistani certainly shied away from the concept in his published scholarship. Ultimately, though, it was all mere conjecture, but those who painstakingly pointed out that nothing on the subject was known first-hand from Sistani were clearly in the minority.⁴⁹ With the posting on Sistani's website from around June 2003 of a series of new fatwas on the subject, and, in November 2004, the publication by several Iranian dailies of another related fatwa, written statements by Sistani on *wilayat al-faqih* were finally available to the public at large.

The new details on Sistani's view of *wilayat al-faqih* came in the shape of a separate website section of fatwas, six altogether, on the subject.⁵⁰ Here he replied to questions about such matters as his understanding of the concept of the "rule of the jurist", its applicability in a world where the Muslim community is subdivided into separate territorial states, the identity of the "jurist" referred to by this concept, and the limits of his authority. The first important element of Sistani's fatwas was his recognition of *wilayat al-faqih* as a concept with a broad, modern meaning. His teacher Ayatollah Khomeini had explicitly denied such a general interpretation; in Khomeini's view the only possible interpretation of *wilayat al-faqih* in the terminology of Islamic jurisprudence related to a field of personal status law concerned with guardianship and non-litigious affairs (*umūr ḥasbiyya*), where it can be used to denote the guardian's authority over a minor.⁵¹ Not so according to Sistani, who now stated that this kind of religious authority applied in "general affairs on which the Islamic social system depends". Next, Sistani made it clear that he was comfortable with the idea of a single cleric upholding this responsibility for all Shiites of the world: to a question

⁴⁸ Fatwa dated 26 Shaban 1425/11 October 2004.

⁴⁹ See for instance Walbridge, "Counterreformation", p. 237.

⁵⁰ This was later expanded to seven. Undated fatwas on *wilayat al-faqih* from www.sistani.org

⁵¹ Jawad al-Tabrizi, ed., *Sirat al-najah fi ajwibat al-istifta'at* (Qum: 1995), vol. 1, interview with Khomeini on *wilayat al-faqih*.

whether the rulings of the *faqih* applied to “all Muslims of the world” or only to where the *faqih* enjoyed effective authority, he voiced support for the first alternative. Who is this *faqih*? “The just jurisprudent acceptable to all the believers” answers Sistani. Are there limits to his rule? Not in the domain of social affairs – unless he contradicts what is “definitively laid down in the Koran and the Traditions of the Prophet” (*ma thabata qat’an min al-kitab wa-al-sunna*). Some of these points were later repeated in a press report published by several Iranian newspapers in late November 2004; that article also included a quote from a fatwa in which Sistani made it clear that the ruling (*hukm*) of the *faqih* would always prevail in social affairs, and would apply to all, including other *mujtahids* (*bar hamah nafiz ast, hatta bar mujtahidin-i digar*).⁵²

Perhaps the most significant aspect of all this is the explicit difference of opinion now expressed by Sistani vis-à-vis his late teacher, Ayatollah Khomeini, who had been unwilling even to recognise the concept of *wilayat al-faqih* at the broader societal level. At the same time, however, sharp differences remain with regard to Khomeini’s doctrine of the rule of the jurisprudent. To Khomeini, the political responsibilities of the *faqih* were central; by way of contrast, Sistani never directly mentions the words “politics” or “the state” when discussing *wilayat al-faqih*. Nor does Sistani indicate any institutionalised role for the supreme jurisprudent. There is no kowtowing to the Khomeinist emphasis on “political” (as opposed to traditional “scholarly”) qualifications for aspiring *faqih* candidates. After all, Sistani has written a full corpus of texts on Islamic jurisprudence without ever seeing any need to resort to the concept of *wilayat al-faqih*; it can hardly constitute a core element of his thinking.

Still, these fatwas also underline that “not holding political office” and “being apolitical” are quite different things. In a fatwa exclusive to the Persian-language section of his website, Sistani answers a question about what a Shiite youth should do in time of war, if the *faqih* orders a holy war (jihad) but his parents refuse to let him participate.⁵³ To this Armageddon-inspired scenario, Sistani’s answer is that the *faqih*’s orders take precedence if they have been issued as an “obligatory duty” (*vajib-i ta’yini*).⁵⁴ The crucial point here is the apparent recognition of the idea of a jihad-declaring *faqih*. It is not unique even among traditionalist Shiite clerics, but it does demonstrate the wide range of legitimate and potential functions that Sistani sees in the *faqih*, and forms another contrast to the more truly apolitical Khomeini.

Similarly, the seemingly anodyne delimitation (anodyne to those concerned about “high politics” anyway) of a field of “social affairs” merits careful examination. Sistani provides several supposedly synonymous variants: “that which the people’s social system depend upon” (*kull ma yatawaqqafu ‘alayhi al-nizam al-ijtima’i li-al-nas*); “that which the system of society depends upon” (*ma yatawaqqafu ‘alayhi nizam al-mujtama’*); that which relates to “the foundation of their social life” (*qiwwam hayatihim al-ijtima’iyya*); general affairs on which depend “the general order of the believers and their livelihoods” (*nizam al-‘ubbad wa-ma’ashuhum*); in the Persian section, “issues concerned with maintaining [general] order” (*umuri kih marbut bih hifz-i nizam*

⁵² *Kayhan* 30 November 2004. The reformist *Hamshahri* had published the report one day earlier – a fact that seemed to disprove the accusation mounted by some followers of the late Khomeini about a “conservative Iranian conspiracy”.

⁵³ Undated fatwa, published at www.sistani.org/html/far/menu/4/?lang=far&view=d&code=148&page=1, accessed on 8 February 2005, later removed. As the fatwa is no longer online, a transliteration is given here: *Su’al: agar vali-yi faqih dar hangam-i jang hukm-i jihad* [no verb follows in original] *vali padar ya madar mukhalifat kunand va-radi na-bashad dar inja hukm-i kudam-i yak arjah ast? Javab: agar wajib-i ta’yini bashad hukm-i jihad muqaddam ast.*

⁵⁴ The opposite of a “voluntary” or “optional” duty, *vajib-i takhyiri*.

ast); in the English, “public affairs upon which depend the stability and order of the Islamic society” and, in another variant, “general affairs with which social order is linked”. But it is worth noting that in his own practice, Sistani has at times staked out a far wider jurisdiction, for instance with regard to issues like trade with Israel. His repeat of an anti-Israeli position in the period after the fall of the Baath demonstrates that previous statements on this were not mere propaganda reluctantly issued at the behest of the authoritarian regime. And with fatwas specifically prohibiting the sale of property to “Zionist” Israelis (instead of “the Jews”, whom he elsewhere treats as any other non-Muslim minority), he is firmly in “political” territory.⁵⁵ It is therefore not inconceivable that the concept of “social affairs” could among Sistani followers come to encompass issues of a governmental and even a diplomatic nature; like a Shiite equivalent of the US Commerce Clause it could function like a piledriver for expanding authority into ever greater spheres of policy-making. Clerics in a tradition which in the past has showed readiness to stand up for the cause of the Palestinians might deem it appropriate for a *faqih* to act again if Muslim lands – particularly those containing sites holy to the Shiites, like Syria and Iran – should be subjected to foreign occupation.

Whom, then, did Sistani think of as *faqih* when he wrote these fatwas? Supporters of the Iranian regime exploded in jubilation when they saw the documents, unquestioningly identifying “the *faqih*” as their own particular leader, Ali Khamenei. However, nowhere in Sistani’s text does the name of Khamenei occur. Indeed, had Sistani’s intention been to refer to Khamenei, he could easily have provided a less Delphic answer (see above, at “who is this *faqih*”) to the straightforward question about the *faqih*’s identity. So could it perhaps be a much more theoretical and abstract discussion of “the *faqih*” – a latent leadership position that could be taken up when and if a competent candidate (maybe even someone like himself) saw fit? As a cleric detached from all state structures, not involved in the day-to-day running of government affairs but occasionally intervening decisively in issues of worldwide significance, possibly on the pattern of the famous anti-British tobacco boycott ruling of Ayatollah Mirza Hasan Shirazi in 1891? In early 2003, before the Iraq War and in the context of news about the genetics work of the French scientist Brigitte Boisselier, Sistani is supposed to have published a warning against human cloning;⁵⁶ could similar issues prompt more decisive, *faqih*-style intervention from him in the future? But then there is the safety clause about the possibility of the *faqih* straying from the Koran and the Traditions of the Prophet, which seems designed for someone else, perhaps even someone from an entirely different scholarly tradition.⁵⁷ Nonetheless, Sistani is the one who performs this meta-legislation and circumscribes the authority of the *faqih*, leaving profound questions as to what his own future role would be if he should decide to remain on the sidelines.

The *wilayat al-faqih* issue did not significantly impact on Sistani’s intervention in Iraqi politics. It sparked off localised debates, many of them on the internet, where

⁵⁵ Fatwa dated 28 Rabi al-Thani 1424/29 June 2003.

⁵⁶ For the period before the Iraq War, Sistani’s website archive of *bayans* seems incomplete. This item is referred to in the “press clippings” section, which would seem to imply recognition of its veracity. “Al-marja’ al-sistani: rubbama tusabu al-bashariyya bi-kawarith insaniyya ghayr mutawaqqa’a nati-jatan istinsakh al-insan” [Maybe mankind gets struck by unexpected human catastrophes as a result of human cloning], 6 January 2003.

⁵⁷ It is true that the Shiites are careful to maintain a sharp distinction between the infallible imams and the rest of mankind, but it is nevertheless interesting that Sistani prefers to put into place checks and balances of this kind to guard against potential outrages by the would-be *faqih*, who would presumably rank among the most illustrious of the Shiite ulama.

unduly jubilant Khamenei supporters were confronted by furious Sistani *muqallids*, many of them equally off the mark as they cried foul about possible Iranian “forgeries” and maintained that Sistani had never strayed an inch from the teachings of Khomeini.⁵⁸ But in Iraq, preparations for the elections took precedence. At one point, it seemed that members of Sistani’s network of representatives were involved in creating a genuinely multi-sectarian and multi-ethnic list that would get the ayatollah’s open endorsement. In the event, it developed into a mainly Shiite coalition, and conflicting reports as to Sistani’s exact association with it proliferated. Some emphasised that Sistani had blessed all lists that participated; others claimed that he had given his “special blessing” to list 169 of the United Iraqi Alliance (UIA). The UIA leadership saw no reason to get stuck in semantics, though. In December they affixed Sistani’s portrait to their own election posters, and soon the notion of a “Sistani list” was all over the country. Such was the hype about Sistani that few seemed to notice that the main character himself had once more fallen silent.

A return to seclusion? December 2004–January 2006

The statistics of public statements by Sistani in the period after December 2004 show how the ayatollah gradually resumed a much more passive and reluctant attitude to the Iraqi political process. In the 17 months preceding that period, he issued 40 *bay-ans*, of which at least 14 explicitly tackled transitional issues in Iraqi politics; in the subsequent 14 months the total figure was down to 15, and no more than 3 dealt with the process of creating a new political system for the country. Beyond statistics, the very manner in which these pronouncements were delivered had changed. Gone was the assertive Sistani, now he appeared terse and dragging his heels.

Many had expected Sistani to issue another fatwa for the January 2005 elections, to provide guidance for the Shiites in this first exercise in democracy in Iraq since the 1950s. In the end none materialised. Instead, those who made dubious claims about his alleged support – including the idea that Sistani should have declared voting for the UIA a religious duty (*wajib*) – had a field day, soon abandoning the lofty unity rhetoric of their assumed sponsor by branding secularist opponents as “Baathists” on their way to a comeback.⁵⁹ On both sides, Machiavellian interpretations abounded: Sistani did not wish to associate too strongly with any party so as to avoid any damage to his position as the ultimate power-broker in Iraqi politics, or, Sistani had in fact decided to support the UIA but did not want to express his views too bluntly.

But more silence followed. After a tortuous negotiating process, a new Iraqi government assumed power in May. Deliberations for a constitutional draft were initiated. But Sistani’s input to the public debate was now at a low ebb. During spring, his

⁵⁸ See for instance “Ayatollah al-Udhma Sistani on Wilayah al-Faqih”, thread started 26 December 2004, www.islamdigest.net/v61forum/index.php/topic,206.0.html, accessed on 6 September 2005, no longer online.

⁵⁹ The Allawi government and its friends played their part in this, postponing a prime-ministerial visit to Iran and labelling the United Iraqi Alliance as an “Iranian” party. For a vivid depiction of how the Shiite propaganda worked out at the local level, see George Packer, “Testing Ground: In the Shiite South, Islamists and Secularists Struggle over Iraq’s Future”, *The New Yorker*, 21 February 2005. A very interesting analysis based on fieldwork in the post-war period shows how micro-level Shiite networks and religious infrastructure contribute to the dissemination of political propaganda; see David Siddhartha Patel, “Ayatollahs on the Pareto Frontier: The Institutional Basis of the Religious Authority in Iraq”, working paper available at http://comparativepolitics.stanford.edu/Papers2005-06/Patel_10_Oct_2005.pdf

most interventionist step was to publish a fatwa in March in which he mildly suggested a rethink of an earlier government decision to make Saturday an official holiday (i.e. to create a weekend from Friday to Saturday, as per the pattern in many countries in the Western part of the Arab world, but different from the Gulf tradition where the Thursday is a day off for many).⁶⁰ And in April, as preparations for constitutional drafting got underway, Sistani's only public offerings were a letter of condolence on the death of Pope John Paul II, and a warning that he disapproved of the practice seen in some areas of Iraq of decorating governmental buildings with his own portrait.⁶¹

In August, the now much-delayed constitutional discussions became feverish as deadlines were passed and legal procedures dispensed with. Sunni Arabs and secularists of all ethnic denominations balked at a radical draft fronted by the Kurds and the religious Shiites, according to which Iraq would become a highly federal state dominated by the regions – and with the possibility of the establishment of a single Shiite federal entity, an entirely new and sectarian scheme rather abruptly embraced by SCIRI during the summer and quickly propelled to international prominence as rumours about a “separate Shiite state” became rife.⁶² Sistani once more refrained from openly choosing sides. Rumours and counter-rumours spread as to his attitude to federalism, but to a direct question in late August whether he had issued a statement opposing the concept or the constitutional draft more generally, he neutrally replied that he had not made any public pronouncement whatsoever on the matter.⁶³ Another leading ayatollah, Muhammad Ishaq al-Fayyad on 31 August came out in favour of what was supposedly the “final draft” of the charter,⁶⁴ but Sistani remained silent.

Constitutional negotiations continued even as the fixed date for the referendum, 15 October, approached. On 12 October, Iraqi parliamentarians agreed on certain additions to the draft in what was principally seen as a move to accommodate Sunni Arab reservations about federalism south of Baghdad and discrimination against ex-Baathists. Most of the new clauses were mere window dressing (including a “guarantee” for the preservation of Iraq's territorial integrity – a largely fictitious device in a document in which the interests of the regions clearly take precedence), but one real concession was included – a one-off constitutional revision scheduled for the next parliament and requiring only an absolute majority (instead of two-thirds) for parliamentary approval.⁶⁵ To sceptics of federalism, it could at least be presented as a theoretical possibility for averting a division of the Arab parts of Iraq into federal sub-units.⁶⁶

⁶⁰ Fatwa dated 10 Safar 1426/21 March 2005.

⁶¹ *Bayan* dated 25 Safar 1426/5 April 2005, fatwa dated 7 Rabi al-Awwal 1426/16 April 2005.

⁶² On earlier failed attempts at establishing separate states or autonomous regimes in southern Iraq, see Reidar Visser, *Basra, the Failed Gulf State: Separatism and Nationalism in Southern Iraq* (New Brunswick, NJ: Transaction Publishers, 2006; Berlin: Lit Verlag, 2005).

⁶³ *Bayan* dated 25 Rajab 1426/31 August 2005.

⁶⁴ Fatwa dated 25 Rajab 1426/31 August 2005.

⁶⁵ This, the only really “final” version of the document that was voted over, appeared in only a few newspapers in Iraq because the country had been largely shut down in a giant security operation during the days prior to the vote. Among the papers that printed the draft was *Tariq al-Shab*, 13 December 2005.

⁶⁶ A moot point is to what extent the added provisions for a one-off constitutional review allow for changes that would affect the powers already guaranteed to the provinces – which are given special immunities in article 122. As of today, however, only the Kurdish region has formally been recognised, and the particular procedures for demarcating additional federal regions – to be decided by future legislation – could no doubt have a decisive impact on this issue.

On the following day, Sistani's offices in Najaf and Qum went into action. In a one-sentence statement that was frantically pumped out from Iran to thousands of e-mail recipients and quoted to anyone who called Sistani's Najaf office, the ayatollah's views on the constitutional draft were finally made public: "His highness favours the participation of the citizens in the referendum and their voting 'yes' for the constitution, despite the failure to eliminate some of its weaknesses."⁶⁷ Third-person language, no signature, no office seal, just the ersatz stamp of his internet office in Iran. Bizarrely, on voting day, his Qum website staff chose to publish two additional press clippings which both quoted Sistani representatives, one reiterating the message that was being circulated, the other contradicting it and disclaiming the idea of Sistani supporting the "yes" camp.⁶⁸ In many ways this marked a low point for a cleric who a little more than one year earlier had been conducting politics with inspiration, self-confidence and unequivocalness. And to those who had read into Sistani's campaign for elections a democratic zest, the reasoning in the message must have brought additional disappointment: "Certain problems remain regarding the contents of this constitutional draft, but with these the electorate need not bother themselves unduly; suffice to say that my deliberations are complete, will you please go out and vote in favour of it?" But such considerations seemed insignificant to Iraqi Shiites who had been thirsting for guidance from Najaf for months. Despite its format being closer to that of an office memo, the statement was soon construed as a fatwa (or "binding fatwa", a favourite expression among English-language writers); it was instantly spread across Iraq, through the extensive network of Sistani representatives and agents, and was no doubt a major factor in securing a comfortable "yes" win in the referendum.

Sistani had been curt regarding the referendum proceedings – he was now to turn to aloofness. The pro-Shiite UIA (now "list 555") repeatedly approached him in the period leading up to the 15 December parliamentary elections, cajoling and coaxing him to obtain some kind of formal endorsement for their list. In the January 2005 elections they had been able to profit from the confused situation around the genesis of the Alliance, in which people in Sistani's network had at one point clearly been involved. Still, they had always hoped for more wholehearted sponsorship, and this point grew in importance towards the end of 2005 as theories about a secularist comeback proliferated. But in November, Sistani limited his public relations exercises to the ritualistic announcement of the end of Ramadan – the sort of non-controversial business that had been his hallmark throughout the difficult years under the Baath.⁶⁹

Similarly, in the run-up to voting day it was only the voices of the increasingly frenetic politicians and their friends in the media that could be heard; the object of all the sweet talk, Sistani himself, seemed unapproachable and incommunicado. Typical was an episode that occurred on 3 December. CNN had been running the same story on Iyad Allawi for almost 24 hours straight. Even the trained toothpaste-smiles of ex-

⁶⁷ E-mail from Sistani's office in Qum, 14 October 2005, with enclosure dated 9 Ramadan 1426/13 October 2005.

⁶⁸ "Ayatullah al-'uzma al-sayyid al-sistani yanfi ma taraddada fi wasa'il al-i'lam bi-an samahatihu as-dara fatwa (na'm li-al-dustur)" [Grand Ayatollah Sistani refutes what has been said in the media about his having issued a fatwa with a "yes to the constitution"]; "Al-sayyid ahmad al-safi mumaththil al-sistani ... tasrih hawla al-dustur" [Statement on the constitution ... by Sayyid Ahmad al-Safi, the representative of Sistani]. It is fair to say that the latter report has dominated in the media. Its interviewee, Ahmad al-Safi of Najaf, was admittedly somewhat closer to the canvas than his Australia-based counterpart featured in the other interview (Muhammad Husayn al-Ansari), but the Ansari report is nevertheless interesting, both for its information from tribal sources inside Iraq, and for the fact that the Sistani website staff decided to publish it at all.

⁶⁹ *Bayan* dated 30 Ramadan 1426/3 November 2005.

perienced news presenters were beginning to fade. But then, finally, there was something that smelled of “breaking news”, a “developing story”. From Baghdad, Aneesh Raman could report that the Grand Ayatollah Ali al-Sistani had effectively declared his support for the UIA.⁷⁰ It was “revealed” that Sistani had warned his followers against secularist, regionalist and small independent parties.⁷¹

There were multiple problems surrounding the purported Sistani statement. First and foremost, the mandatory signature and office seal were nowhere to be found. The style was grandiloquent and seemed at variance with the almost telegraphic format that had characterised Sistani’s latest pronouncements. And no one in the local Iraqi press appeared to take it seriously. Even *al-Adala*, the SCIRI mouthpiece which would have been an obvious candidate to break this sort of news, maintained its silence. (A few days later it did carry as front-page material another story on a related subject, less impressive but at least authentic: support for the UIA by a student organisation in Najaf.⁷²) Iraqi newspapers soon concluded that the whole episode had been a hoax, an unattributable *manshur* or handbill of the sort only too common in Baghdad ever since it got its first printing press in the nineteenth century.⁷³

15 December was now fast approaching and Iraqi politicians were in a hurry. Five days ahead of voting day, a kind of breakthrough was reported. Sistani had finally issued a fatwa; this time the document was properly sealed and in all technical aspects in perfect order. The only slight problem was the content, which seemed decidedly anaemic to those who had been wishing for a UIA endorsement. Sistani did repeat his earlier emphasis on the importance of participating in the elections, but the one possible hint about which specific party to vote for was contained in the sentence, “one must not scatter [or “disperse”, or “split” (*tashtit*)] the vote and let it be spent uselessly (*ta’riduha li-al-daya’*)”.⁷⁴ One plausible interpretation – especially given the second element of the sentence which is more unequivocal⁷⁵ – would be simply to see this as a suggestion to avoid smaller parties which stood no chance of winning seats anyway. In the previous elections in January 2005, around 110 parties had fielded candidates but only 12 received seats in the parliament; a staggering 410,000 votes or the equivalent of some 13 parliamentary seats had been thrown away on those parties. But those with a “political” reading of Sistani soon settled for a more far-reaching explanation of Sistani’s somewhat bland and uninspiring document. On 11 December, AFP’s Bassem Mroue wrote,

“On Sunday, Iraq’s leading Shiite cleric, Ali al-Sistani, issued a binding religious decree, or fatwa, instructing followers to vote for candidates ‘who can be trusted to protect their principles and safeguard their interests’. That appeared to be a veiled endorsement of the United Iraqi Alliance...”⁷⁶

At any rate, UIA spin-doctors were already weeks into a campaign modelled on the success of the previous election, with some new twists added to the repertoire to

⁷⁰ CNN World News 3 December 2005, 2100 GMT.

⁷¹ The full statement appeared in an unattributed Arabic news article titled “Bayan al-marja’iyya hawla al-intikhabat” [Pronouncement by the religious leadership on the elections], 3 December 2005, published for instance at www.irqparliament.com/Art12A/Bayan_Dec04.htm

⁷² *Al-Adala*, 6 December 2005.

⁷³ *Al-Mutamar*, 6 December 2005.

⁷⁴ Fatwa dated 8 Dhu al-Qada 1426/10 December 2005.

⁷⁵ Arabic expressions like *tashtit al-aswat bi-al-qawa’im al-da’ifa* (“a scattering of the vote to weak parties/lists”) suggest that the concept is rather wider than the English “to split the vote”.

⁷⁶ Bassem Mroue, “Iraq Closing Borders Ahead of Election”, AFP, 11 December 2005.

maintain the illusion of Sistani as the coalition's official sponsor. In late November, Ammar al-Hakim (son of the SCIRI leader) told a gathering in Karbala, "the list of the [United Iraqi] Alliance is the hand of the *marja'iyya* [the religious leadership],⁷⁷ it follows the orders of the *marja'iyya* and acts in accordance with its instructions".⁷⁸ UIA campaigners in places like Basra showed no restraint in exploiting Sistani's portrait for canvassing purposes. And even Abd al-Aziz al-Hakim – the SCIRI leader and as such committed to a minimum of tactfulness towards Sistani – found a loophole for dealing with the absence of express support. In early December, he reminded a large audience in Maysan that the UIA was the coalition "that *had been established* with the blessing of Imam Sayyid Sistani", a reference to the early days of coalition negotiations in the autumn of 2004, when there clearly had been some degree of communication between Sistani and the politicians.⁷⁹ These tactics paid off; the UIA victory on 15 December proved even more resounding than it had been in January 2005.

Interpretations

The problem with many recent analyses of Sistani is that they postulate Iraqi politics as an end goal for Sistani. Whenever there is a political twist in Baghdad, preying eyes fall on Najaf in search of Sistani's latest "response" or "initiative". The leading *mujtahid* is seen as a determined politician; carefully he crafts his political test balloons before setting them aloft in the Najaf sky, monitoring their exact trajectories in order to maximise the impact of his next stratagem.

An alternative approach would be to ask critical questions about the driving forces in these processes. Instead of concentrating so much on Sistani, one might focus on the desperate politicians who come to Najaf begging for a fig leaf of religious legitimacy, often to make up for a shortage of material policies. Since the autumn of 2003, Sistani's premises in Najaf have been inundated by visitors; it seems fair to assume that most guests have invited themselves.

This is a familiar theme in Iraqi history. For instance, in the spring of 1928, as the sectarian Shiite Daawa party prepared for the upcoming parliamentary elections, they approached the leading ulama to get them involved in their proceedings. And as usual, the response was cool:

"Karbala, 15 February 1928. The Commandant of Police reporting for the week says that at present everything is subordinated to the elections. During the Shaban pilgrimage, Hajji Amin al-Charchafchi and Hajji Hasan al-Shabbut were busy with the tribal chiefs, canvassing their support. Among the ulama, Shaykh Muhammad Husayn Kashif al-Ghita and Sayyid Muhammad Ali Bahr al-Ulum have been busy, *but efforts to induce Sayyid Abu al-Hasan al-Isfahani and Mirza Husayn al-Naini* [the two top *mujtahids* at the time] *to give an expression of opinion, have proved fruitless* [italics added]."⁸⁰

⁷⁷ Theoretically, this concept could refer to all practising *mujtahids* as some kind of quasi-collectivity; in practice, to many Iraqis, it is synonymous with Sistani.

⁷⁸ "Al-sayyid 'ammar al-hakim yaltaqi bi-jamahir wa-'asha'ir wa-wujaha' karbala' al-muqaddisa" [Ammar al-Hakim meets with the people, the tribes and the notables of holy Karbala], 24 November 2005, badrnews.com

⁷⁹ *Al-Adala*, 8 December 2005 p. 9

⁸⁰ Baghdad High Commission Files in the National Archives of India, New Delhi, file 7/15/3 vol. VIII, Abstract of Intelligence no. 7, 18 February 1928.

In many ways this resembles today's situation. The dynamics at work could be quite similar. Perhaps the chief difference is that those dynamics are today being read with a different pair of eyes, with the a priori – and in many cases probably erroneous – assumption that the religious leaders are the pro-active force in the process. It seems highly unclear, for instance, what conclusions can be drawn from self-contradictory reports like the following one:

“In a bid for support, two lawmakers from al-Jafari's Daawa Party visited the Shiite holy city of Najaf Saturday to seek the endorsement of Shiite spiritual leader Grand Ayatollah Ali al-Sistani. They *hinted* al-Sistani approved of their candidate. But a *senior* al-Sistani *aide*, speaking on condition of *anonymity* Sunday because of the *sensitivity* of the dispute, said the spiritual leader had *indirectly suggested* al-Jafari should step aside [italics added].”⁸¹

Could it be that the grand ayatollah had no particular desire to interfere in the struggle? Perhaps he simply found it too impolite to let the men leave without a modicum of polite conversation and therefore put forward a few non-controversial generalities? This is not to suggest that Ayatollah al-Sistani is a non-calculating esoteric, oblivious to his own enormous influence and completely in the dark as to the political consequences of his rulings and other pronouncements. Rather, it means that it can be useful to study Sistani as cleric first and foremost – and in the light of a wider set of priorities, in which Iraq features as merely one of several provinces in a worldwide jurisdiction.

One possible Sistani motive for the period since 2003 has to do with his role as protector of Shiite orthodoxy, as expressed through the Usuli school of thought. A distinguishing characteristic of that trend within Shiism is the dominant role it accords to the *mujtahid* clergy as the sole legitimate interpreter of Islamic law – a sharp contrast to competing currents like the Akhbari direction (where the role of the ulama is more circumscribed) and recent neo-Akhbari trends (where the clergy is often circumvented altogether, much on the pattern of modernist Sunni movements). Shortly after the collapse of the Iraqi regime in early 2003 the *mujtahid* monopoly came under threat. Underground Shiite political movements soon mushroomed, many of them directed by young religious students who had completed only a few years of their studies. Importantly, heterodox ideas featured prominently, as Sadrists toyed with a tactic of severing all links with the *mujtahid* stratum, and even Mahdist episodes were reported. There were threats against Sistani's life too, and wild rumours that he was to be expelled. Many Sadrists accused him of having reduced Najaf to a “dormant seat of learning”; now they made an attempt at defining their own “articulate” seminary (*hawza*) and ensuring its supremacy by gaining physical control of the religious infrastructure of Iraq's holy cities.⁸² In subsequent months, the Sadrists would go even further, attempting to construct a dual tier of quasi-governmental institutions, most prominent among them the so-called Mahdi Army.

Sistani's political involvement from June 2003 to December 2004 may in part have been a response to this challenge. In late June 2003, just days after the “democracy” fatwa that had broken his silence on political affairs, Sistani published another fatwa, on the subject of a Najaf institution which called itself the Scientific Seminary (*al-*

⁸¹ Qassim Abdul-Zahra, “Violence Hinders Formation of Iraqi Government”, AP, 5 March 2006.

⁸² This vocabulary stems from Muqtada's late father. Visser, “Shi'i Perspectives on a Federal Iraq”, pp. 148–152 and pp. 156–157.

hawza al-'ilmiyya), widely known to be the latest Sadrist initiative to achieve a take-over in Iraq's most important city of learning.⁸³ In the ruling, Sistani dismissed any links with this new "seminary", and specifically disapproved of some of its practices like redistributing stolen household articles originating from the post-war looting and its interference in the running of local health and education services. Importantly, Sistani advised that in this confused situation, the best source of guidance would be "the *marja'* which one emulates" – a firm reassertion of the authority of the established *mujtahids* during a challenge from renegades who spoke in the name of Shiism but lacked all prerequisites for assuming leadership according to the traditional criteria.

In the course of the subsequent year, Sistani in various ways stood up against the Sadrist challenge. Through his spell as a co-operative media object in the autumn of 2003 and well into 2004, he effectively rebutted the charge that he was "dormant" and "inarticulate". By being constructive but firm on the subject of the US-led occupation, he succeeded in countering Sadrist nihilism vis-à-vis the Iraqi transition process. And in the summer of 2004 he could even afford to be magnanimous towards the vulnerable in a society increasingly dominated by Islamist rhetoric: in a *bayan* he condemned a series of "criminal" attacks against Christian churches in Baghdad and Mosul.⁸⁴ Significantly, this was not a response to a request for a fatwa, but a pronouncement published on his own accord, delivered in the context of harsh anti-Christian rhetoric on the part of the Sadrists.

There has been a certain amount of controversy about Sistani's role in the siege of the militant Sadrists in August 2004 – an episode that coincided with his briefly leaving Najaf to receive hospital treatment in London, his first trip outside Iraq for several decades. Some analysts raised eyebrows at what they saw as "perfect timing" that gave US and Iraqi government forces a free hand to deal with the Muqtada al-Sadr and his followers, a few even hinting at his London office as a possible orchestrator.⁸⁵ Again others have emphasised Sistani's role in bringing about some kind of truce upon his return, to some extent a face-saving solution for Sadr.⁸⁶ Whichever interpretation is adopted, the extent of Sistani's victory over Sadr by the autumn of 2004 seems clear. At no point did the Sadrists carry out their ideas about attacking the fundamental dichotomy between *mujtahids* and *muqallids*. Nor did any substantial Mahdist-style religious uprising take place. There had been regular clashes between armed supporters of Sadr and Sistani, but in the sphere of religious doctrine, it was Sistani who emerged unscathed. Just as their nineteenth-century colleagues had fended off Shaykhism and Babism, the traditionalist clergy of post-war Najaf with Sistani at the helm dealt a decisive blow to the Sadrists – at least as far as the question of religious renewal and Shiite doctrine was concerned.⁸⁷

Beyond the question of defending the basic principles of Usuli Shiism, a limited "Iraq mission" would also be perfectly consonant with Sistani's career as a traditionalist Shiite cleric. Also other scholars with supposedly "apolitical" credentials

⁸³ Fatwa dated 29 Rabi al-Thani 1424/30 June 2003.

⁸⁴ *Bayan* dated 15 Jumada al-Thani 1425/2 August 2004.

⁸⁵ For this kind of interpretation, see for instance Milan Rai, "The Sistani Puzzle", 1 September 2004, from www.zmag.org

⁸⁶ Yitzhak Nakash, *Reaching for Power: The Shi'a in the Modern Arab World* (Princeton: Princeton University Press, 2006) pp. 150–153.

⁸⁷ This should of course not be seen as a denial of the considerable *political* strength of the Sadrists. But in terms of basic theology, they restrained themselves, choosing to rely on a combination of the rulings of Iran-based Kazim al-Hairi and legal interpretations of Muqtada's late father, Muhammad al-Sadr. On the growth of this movement and a discussion of its potential, see Juan Cole, "The United States and Shi'ite Religious Faction in Post-Ba'athist Iraq", *Middle East Journal* vol. 57 no. 4 (2003), pp. 543–566.

alist Shiite cleric. Also other scholars with supposedly “apolitical” credentials have occasionally switched to more activist modes when it suited their professional interests to do so. Thus, Ayatollah Muhsin al-Hakim in the 1960s made clear his opposition to communism, whereas Ayatollah Husayn Burujirdi had interfered in land reform in Iran in the 1950s. Even Ayatollah Khomeini in the early 1970s issued a *hukm* ruling with political undertones, forbidding foreign religious students to leave Iraq at a time when the Baath was trying to subdue the holy cities by expelling their student populations.⁸⁸ None of this involvement in the politics of their countries of residence disabled the Shiite ulama from continuing to perform a spiritual leadership role for their worldwide communities of followers.

In this context, it is important to remember the essentially open-ended character of the Iraqi transition in the period when Sistani chose to go public – between 2003 and 2004, long before the decisive victory of the pro-Shiite UIA in the January 2005 elections. This was the time of the returned exiles, with much talk about a “non-Arab”, secular Iraq, with a new flag and even a new capital. US and British administrators seemed inclined to repeat certain failures of their mandate-era predecessors by mysteriously managing to appoint Sunni administrators in Shiite majority areas like Basra and Najaf, and were also planning for a constitutional process that would involve non-elected caucuses. The emergence of Iyad Allawi as prime minister in 2004 (instead of a technocratic government) must have seemed to many in Najaf like a continuation of a Baath-style regime, if perhaps purged of its worst anti-democratic elements and with a nominally Shiite head as leader. And as late as in the autumn of 2004, many Shiites feared that the upcoming elections would be manipulated and gerrymandered – in the same way as parliamentary elections had been in the past, when Sunnis somehow gained seat after seat even in Shiite majority areas, always enjoying advantages because they were well educated and already had a foot inside government. Against this backdrop, Sistani’s insistence on the principle of “one person, one vote” was not only a method for getting the country back on an even keel – it was a subtle and non-sectarian way of addressing the gross injustice suffered by the Shiites in modern Iraqi history; a brief intervention in one of his dioceses where things had gone particularly wrong. All the while he steered clear of the nitty-gritty detail of Iraqi politics and the concomitant risk of corrupting his scholarly and international reputation.

Even Sistani’s excursus into the thorny field of *wilayat al-faqih* can make sense from a traditionalist point of view. It is entirely possible to read his fatwas on the subject through the lenses of “old Shiism”, with the “*faqih*” embodying traditional concepts like “the most learned” (*al-a‘lam*)⁸⁹ and the “model of emulation” (*marja‘ al-taqlid*), and the notion of his supremacy (or the potential for supremacy) resting with the instrument of a *hukm*, a ruling of general applicability and also a well-established term in Shiite jurisprudential vocabulary.⁹⁰ Thus, instead of kneeling to Khomeinism, he seems to retake the politicised *wilayat al-faqih* concept on behalf of traditional Shiism. His stand is not entirely without precedence; as early as in the 1940s, “quietists” like Burujirdi reportedly took quite similar theoretical steps towards acknowl-

⁸⁸ Ali Ahmad al-Bahadli, *Al-hawza al-‘ilmiyya fi al-najaf: ma‘alimuha wa-harakatuha al-islahiyya, 1339–1401 h./1920–1980m.* [The religious colleges of Najaf: characteristics and reform movements, 1920–1980] (Beirut: Dar al-Zahra, 1993), pp. 360–361 n. 3.

⁸⁹ Unlike many of his more egalitarian-minded peers, Sistani has been perfectly clear about his ideas of a strict ranking of the top clergy, with notions such as “the next [second] most learned in line” (*ma‘a ri‘aya al-a‘lam fa-al-a‘lam min ba‘dih*) featuring in his works.

⁹⁰ On Ayatollah Husayn Burujirdi’s claims to the universality of his rulings, see Abbas Amanat, “From *ijtihad* to *wilayat-i faqih*: the evolving of the Shi‘ite legal authority to political power”, *Logos*, summer 2003.

edging the concept of a single *faqih* with overall responsibility for the welfare of Muslims.⁹¹

In this interpretation, Sistani's limited intervention in Iraqi politics between 2003 and 2004 is not alien to established Shiite doctrine. If anything, it is the constantly political Khomeini and the programmatically apolitical Khomeini that emerge as radical extremes and anomalies within a mainstream tradition. Sistani's actions in Iraq, on the other hand, fall neatly into a tradition of *occasional interference* in politics that goes back to the tobacco boycott ruling of Ayatollah Shirazi in 1891. It is an approach that is neither completely quietist nor bureaucratic in the extreme. Instead, it rests on charismatic (but often low-key and subtle) power and the ability of the leading Shiite clerics to interfere at selected junctures, with a single stroke of the pen impacting political debate far more forcefully than an entire assembly of career politicians would be able to. These junctures are not chosen randomly; they tend to materialise if the *mujtahid* monopoly of Usuli Shiism is under threat, or if local intervention can serve to promote the career of a traditionalist cleric without detracting from his standing in the wider international world of Shiism. Conversely, should clerical involvement in politics directly pose risks to the integrity of religious precincts (like those of Najaf), or to the more basic religious role of the clergy, the ulama may well opt to stay quiet for that reason. It seems improbable that all the "quietism" seen in Iraq during a violent twentieth century should be reducible to principled abstentionism alone.

This perspective on Sistani's actions makes sense for the period between June 2003 and November 2004. His correspondence and other public statements in this period appear so voluminous, eloquent and inspired that allegations of hidden hands systematically interfering from the outside in some sort of large-scale forgery conspiracy seem entirely off the mark.⁹² More difficult to evaluate, though, is what happened during 2005, when Iraqi politics grew increasingly sectarian, and when Sistani rather surprisingly seemed to give the go-ahead for a constitutional draft that appeared to be at variance with his own emphasis of anti-sectarianism and Iraqi national unity and even opened up for the creation of a single Shiite federal entity. The individualist *marja'iyya* tradition of the Shiites has no record of amassing contiguous territory for itself as per the Papal pattern; the norm has been investments in scattered real estate properties worldwide suitable for educational and welfare developments. If Sistani became associated with overtly sectarian and potentially separatist politics in Iraq and got bogged down in petty scrambles for territory, that would no doubt jeopardise his leading role as a Muslim scholar of international stature. Could it be that outside

⁹¹ Ali Karbala'i, *Pishinih-i wilayat-i faqih* [Antecedents for *wilayat al-faqih*] in *Fiqh* no. 29–30; Husayn Ali Muntaziri, *Dirasat fi wilayat al-faqih wa-fiqh al-dawla al-islamiyya* [Studies in *wilayat al-faqih* and the jurisprudence of the Islamic state] (Qum, 1988) pp. 456–460. One might perhaps suspect the sources on this, who are both strong supporters of the Iranian revolution, of a bias in favour of *wilayat al-faqih*. They are however sober enough to bluntly acknowledge Khomeini's scepticism towards the concept.

⁹² It is occasionally suggested that all of Sistani's political statements are subterfuge concocted by close confidants who themselves have no ambitions within the world of scholarly Shiism. It would be difficult to employ that kind of reasoning to account for the marked contrast between Sistani in 2003–2004 and 2005, however. Large-scale plotters could at least be expected to have a clear idea of their own preferences; Sistani in 2005, on the other hand, appeared positively nonplussed at times. Alternatively, if the possibility of hidden hands operating behind the scenes is indeed accepted, then at least there is a method to it in that three distinct phases can be identified after 2003. It is worth pointing out that disconcertingly few of Sistani's statements these days carry his own personal seal and signature (as opposed to the insignia of his Najaf office – also valid according to his "signed & sealed" code, but inevitably detracting somewhat from the image of a cleric in complete command over his own bureaucracy). Some specimens can be found in prefaces to his books from the 1990s.

forces were trying to exploit the now reticent ayatollah for political purposes? Did the jungle of Sistani “advisers” and “representatives” harbour any clusters of methodically subversive aides?

Among the most powerful individuals within Sistani’s network are his representatives in Beirut and London, Hamid al-Khaffaf and Murtada al-Kashmiri – the former often appearing as “official spokesman” for Sistani. The two have occasionally published statements directly on Sistani’s website in what appears to have been direct communication between themselves and the Sistani internet office based in Iran.⁹³ But whereas Kashmiri in late 2004 seemed to play a certain role in disseminating the report that Sistani had given “a special blessing” to the UIA,⁹⁴ by the December 2005 elections both men had reverted to emphasising Sistani’s political neutrality.⁹⁵ In repeated public statements, they have also stressed the general anti-sectarian message of Sistani.⁹⁶ With their eyes directed at congregations outside Iraq, it does not seem obvious that they should have any particularly strong interests in a constitution that could lead to the country’s partition.

More conspicuous in this regard are the overtly political activities of some of his *wakils* inside Iraq. In particular, there seems to exist an uneasy tension between Sistani’s idea that men of religion should not seek office – first expressed in early 2003 but apparently reconfirmed at later intervals – and the appearance of at least two of these representatives on the UIA list of candidates in January 2005. As this was a constituent assembly, it might perhaps be interpreted as falling within Sistani’s broad provisions about the clergy delivering “general guidance”. An alternative interpretation is to see it as the case of a politically minded cleric testing the limits of Sistani’s tolerance; interestingly enough, in the second election in December 2005, one of these clerics, Ali al-Safi of Basra, had been replaced by his non-turbaned brother Abd al-Wahhab, an engineer by profession. At any rate, whereas these members of Sistani’s network may be immensely influential in local settings, they would not have the ability to manipulate the long-range communications tools of Sistani’s machinery in the same way as his representatives in London and Beirut.

Perhaps the most powerful figure within Sistani’s web of contacts is the head of his Qum office, Jawad Shahrastani, with respect to whom an elusive Iran factor is also part of the picture. Shahrastani’s bureau maintains Sistani’s website, which is supposed to be the centralised source for all information pertaining to him, and also conducts much of the phone- and fax-based communication with Sistani followers worldwide. This entails certain editorial prerogatives: only a small percentage of Sistani’s many fatwas are eventually published via cyberspace, and the selection of “press clippings” is likely done in Qum rather than in Najaf.

The heretical but necessary question is whether these prerogatives might have enabled Shahrastani to pursue a Sistani policy of his own – perhaps with the tacit approval or even encouragement of Iranian hosts eager to see Shiite federal cantons emerging next door. In this regard, two items published during 2005 call for attention. The first is the “neutrality-on-federalism” *bayan* in August – in itself a perfectly innocuous document, but in the context of SCIRI’s federalism propaganda in that period

⁹³ See the discussion above about the post-war statement published via London, and *bayan* dated 25 Rajab 1426/31 August 2005.

⁹⁴ As late as in January 2005, the Imam Ali Foundation in London (Sistani’s main affiliate institution in the British capital) spoke of UIA candidate Husayn al-Shahrastani as a member of the “board authorised by Grand Ayatollah Sistani to form the United Iraqi Alliance”.

⁹⁵ *Baghdad*, 13 December 2005.

⁹⁶ Khaffaf interview on Al-Manar Television, Beirut, 25 February 2004, transcript by FBIS.

it could be seen as a politically tinged message. It would no doubt be of immense value to pro-federal (and pro-sectarian) Shiite politicians to have a statement of neutrality on federalism, because all previous communications from Sistani had so emphatically focused on national unity and anti-sectarianism. At this stage, all that can be concluded is that the Shiite clergy's practice of keeping an almost permanent correspondence with their followers (who can always request fatwas or ask for other clarifications) leaves the door wide open for agents provocateurs; once a pronouncement is produced, the decision whether to publish it or not may well have been controlled from Iran as much as from Iraq.

Similar question marks pertain to the "e-mail fatwa" on the constitution. Until this day, it has not actually appeared on the Sistani website. In fact, nowhere in the text is there any claim that the document emanated from Sistani – it merely purports to paraphrase him loosely. This inevitably raises questions about the authorship of those crucial words, and also why a properly signed and sealed document could not have been faxed or PDFed and e-mailed from Najaf as per the standard procedure. It is true that there is a certain precedence among Shiite ulama of earlier ages for letting fatwas travel incognito (witness the mysterious genesis of Shirazi's tobacco fatwa of 1891), but Sistani's articulate intervention in Iraqi politics between 2003 and 2004 strongly seemed to demonstrate a preference for more transparent methods.⁹⁷

At of today there is however no convincing documentary basis for insinuations of this kind. The circumstantial evidence is limited to the (admittedly stark) discrepancy between Sistani's focus on "national unity" during 2004 and a constitution which seems moulded in an altogether different spirit. And the cliché image of permanent and intractable conflict between Sistani and Tehran is so empirically problematic that it is of limited value for conjuring up conspiracy theories. That image overlooks the considerable links between Sistani and Iran dating back to the 1990s, Sistani's extensive investments in religious infrastructure in his home country, and the deference shown by Tehran towards the Najaf cleric despite their differences over doctrine.⁹⁸ Sistani's influence in Shiite constituencies worldwide is such that it would be completely foolhardy of Iran to engage in outright misrepresentation of him.

Finally, there are also elements in the new Iraqi constitution that may have helped sweeten the pill considerably for Sistani. The stipulation that no legislation may contradict Islamic law reflects a well-established Shiite demand that was spearheaded during the Persian constitutional revolution a century ago. All explicitly sectarian language (the appropriation of government positions to specific ethno-religious groups etc.) – a chief focus of Sistani's discontent with the 2004 TAL – has also been removed, at least in a strictly technical sense. And the 12 October additional paragraphs also offer a real option for addressing remaining reservations concerning the draft. In concert, these factors may have persuaded Sistani to drop his reservations against the new Iraqi charter, although it seems clear that he is reluctant to have his career as a *mujtahid* intimately associated with it.

⁹⁷ The prompt response by Sistani's office after the Samarra bombings in February 2006 – when a sealed *bayan* was online in a matter of hours after the incident – suggests that the physical distance between Najaf and Qum may not have been the main problem involved.

⁹⁸ Visser, "Shi'i Perspectives on a Federal Iraq", pp. 139–140.

Ways ahead

Is Sistani's mission in Iraqi politics now complete?

If the interpretation presented in this paper is correct, the pattern of Sistani's interference in politics is spasmodic rather than incremental. For long intervals, he may prefer to lapse into obscurity, to focus on the more traditional routines of his religious leadership role – or he may decide to limit his interventions to issues of a more universalistic character. That is exactly what he did during the first months of 2006, when he after a long period of silence joined the chorus of condemnations of Danish caricature drawings of the Prophet Muhammad, and, using unusually strong language, condemned the February terror bombing of the Shiite mosque in Samarra – an attack that had implications far beyond Iraq in that it struck at one of the key sanctuaries of Shiism.⁹⁹ But the potential for intervention also in the regular political process in Iraq will remain. What will likely prompt action by Sistani are challenges that attack the very fundamentals of Shiite orthodoxy, or situations where local politics offers indubitable opportunities for augmenting his stature as a universalistic and non-sectarian luminary in a global community of Muslims.

At present, only three such potential junctures stand out with any prominence – that is, unless US policy should depart from the stated aim of seeing the transition through and then leaving (for instance, by overstaying in Iraq even after having been asked to leave by a majority of elected Iraqi deputies; or by demanding permanent military bases; or by conducting anti-Iranian operations from Iraqi soil; or another Abu Ghayb scandal etc.). Those three junctures relate to anti-Shiite terrorist attacks, the federalism question, and the composition of Iraq's future constitutional court.

Sectarian terror attacks against the Shiites of Iraq have been on the increase since 2004. The recent bombing of Samarra targeted one of the most important holy places of the Shiite faith – the mosque at the place where the Twelfth Imam disappeared and where two other imams are buried. In publicly responding to this growing wave of attacks, Sistani has consistently limited himself to condemning those incidents that have involved Shiite clerics or holy sites: the August 2003 attempt to assassinate his colleague Muhammad Said al-Hakim; the killing of Muhammad Baqir al-Hakim in the same month; the terror attacks against Ashura commemorations in Karbala and Kazimayn in March 2004; the tragedy of the bridge that collapsed at Kazimayn in August 2005 in a context of terrorism-induced panic among worshippers; and, most recently, the bombing of the mosque at Samarra.¹⁰⁰ His response to the Samarra attack was unprecedented in that it hinted at the use of non-state armed forces in the protection of Shiite holy sites; from the theoretical point of view, however, this seemed more like a return to his pre-2003 position of withholding legitimacy from the state when it performs badly rather than an attempt at systematically replacing it with new structures of his own choosing.¹⁰¹ There are frequent calls in Iraq for Sistani to play a more active role in combating terrorism,¹⁰² but for him to do so would require a considerable political re-orientation. So far it is this universalistic and faith-focused approach that has dominated; hypothetically, an attack on a target like the Shiite Zay-

⁹⁹ *Bayans* dated 1 Muharram 1427/31 January 2006 and 23 Muharram 1427/22 February 2006.

¹⁰⁰ *Bayans* dated 26 Jumada al-Thani 1424/25 August 2003; 2 Rajab 1424/30 August 2003; 10 Muharram 1425/2 March 2004; 25 Rajab 1426/31 August 2005; 23 Muharram 1427/22 February 2006.

¹⁰¹ In October 2003, Sistani had publicly voiced his preference for a national Iraqi army instead of private militias. *Bayan* dated 21 Shaban 1424/18 October 2003.

¹⁰² See International Crisis Group: "The Next Iraqi War? Sectarianism and Civil Conflict", Middle East Report no. 52, 27 February 2006, available from www.crisisgroup.org, pp. 24–26.

nabiyya mosque in Damascus in Syria (claimed as the shrine of the daughter of Imam Ali) might well prompt stronger reactions from him than a terrorist assault on a Shiite but non-religious target in Iraq. Historically, there are numerous examples of Shiite clerics refusing to blow with local sectarian winds while still managing to maintain their leading position – the stand of Abu al-Hasan al-Isfahani in the 1930s is a case in point.¹⁰³

Sistani's public comments with regard to the federalism issue have been minimal. Many of his pronouncements in 2004 had a very strong anti-sectarian and pro-unity tone; however no statements explicitly tackled federalism. All the reports of an anti-federal attitude in 2004 were mere rumours based on statements by politicians or *wakils* of modest standing within his bureaucracy – as were stories from the summer of 2005 indicating that he no longer held any objections.¹⁰⁴ But if the October 2005 “e-mail fatwa” on the constitution does indeed reflect his position adequately, then it would seem to suggest that he had stepped back from any previous reservations against federalism. The new constitution not only enshrines a federal state structure for Iraq, it also removes some of the checks and balances against sectarian federal entities that were contained in the TAL of 2004.¹⁰⁵

Will Sistani intervene if the implementation of federalism in Iraq turns out to fortify sectarian tendencies? What if SCIRI proceeds with the most sectarian of their federal visions, the one combining nine Shiite governorates? If the rehabilitation of the Shiites in Iraqi politics tips over and becomes raw confessionalism, will Sistani then stand up for what he said in early 2004 in a written response to CNN reporters, that “Sunnis and Shiites together will guard the national unity of their country”?¹⁰⁶ The answer to this may come during 2006, when a revised constitution is to be put to referendum, and when pleas by Shiite politicians for “advice” and “guidance” from Sistani look set to resurface. On the basis of what happened in October 2005, an anti-

¹⁰³ On Isfahani's principled stand against self-flagellation during Muharram – a ritual generally favoured by the large masses of Shiites in Iraq at the time – see Werner Ende, “The Flagellations of Muharram and the Shi'ite ‘Ulama’”, *Der Islam*, vol. 55 (1978), p. 26. Isfahani similarly steered away from political involvement during the Shiite tribal uprisings of the 1930s; nevertheless tribesmen continued to support him financially and poured out in their thousands to mark their grief on his death in 1946. Despite their unwillingness to play the game of sectarianism, the top religious leadership in Najaf in the 1930s were fiercely competitive and alive to popular feeling: in 1930, Ayatollah al-Naini reportedly considered relocating to Samarra to make up for a loss in revenue due to Isfahani's increasing popularity, see Air Ministry files in the National Archives at Kew, UK: AIR 23/267, Special service officer Baghdad to Air Head Quarters, 6 August 1930.

¹⁰⁴ Examples include interviews with Abu al-Qasim al-Bidali on Voice of the Arabs Radio, Cairo, 4 February 2004 (FBIS transcript); Abd al-Mahdi al-Karbalai, *al-Hayat*, 9 February 2004; Ibrahim al-Jafari on al-Arabiyya Television, 6 August 2005. Symptomatic of this sort of “Sistani chatter” is the claim made by SCIRI member Hammam Hammudi in *al-Mutamar*, 5 July 2005, that he has heard from Hamid al-Khaffaf (Sistani's Beirut representative) that Sistani does not object to the creation of a small-scale three-province federal entity in the far south, the *iqlim al-janub* (Southern Region) project. (It should be added that this particular project is a regionalist, not a sectarian scheme; it should not be confused with the proposal for a greater Shiite super-region. Instead, it is based on local Islamist initiatives in the oil-rich far south, where Sadrists and the Fadila Party control two governorate councils (Basra and Maysan) and are strong also in the third (Dhi Qar). On the background of the scheme, see Visser, *Basra, the Failed Gulf State*, pp. 171–176.)

¹⁰⁵ On problems related to the absence of an “anti-sectarian safety valve” in the new Iraqi constitution, see Reidar Visser, “Shiite Separatism in Iraq: Internet Reverie or Real Constitutional Challenge?”, *NUPI Paper* no. 686 (Oslo: Norwegian Institute of International Affairs, August 2005), available at <http://historiae.org/shiseparatism.asp>, p. 15.

¹⁰⁶ *Bayan* dated 13 Dhu al-Qada 1424/6 January 2004.

federal Sistani intervention seems unlikely.¹⁰⁷ Despite all his rhetorical support for the idea of Shiite-Sunni coexistence in a single state, those hoping for a Shiite cleric prepared to decisively stand up for the unitary state may have to look elsewhere – to *mujtahids* like Muhammad al-Yaqubi, Jawad al-Khalisi and Lebanon-based Muhammad Husayn Fadl Allah (still popular among many Daawa supporters), and to aspiring clerics such as Muqtada al-Sadr.¹⁰⁸

Could Sistani instead make a U-turn and switch to a pro-federal position? What if the parliamentary committee charged with revising the current constitution recommends postponing the implementation of federalism south of Baghdad until the next parliamentary term scheduled for 2009, and SCIRI, which favours Shiite autonomy, pleads for a “no” vote in the referendum? This is a delicate question. From a purely material perspective, a tacit alliance with SCIRI and implementation of federalism in Iraq could prove remunerative for Sistani because pro-federal SCIRI have no established *mujtahid* clerics qualified to threaten his pre-eminent status and seem content to lean on him for Islamic legitimacy – in contrast to those who defend the unitary state, like some of the Sadrists loyal to the *mujtahid* Muhammad al-Yaqubi. But this would be in disharmony with Sistani’s anti-sectarian ideology, and problematic in terms of Shiite political theory: once the framework of the existing state system is forsaken in the name of greater Shiite unity, it would be difficult to argue against the complete merger of Iran and the Shiite parts of Iraq. This in turn would expose Sistani to a host of new problems, in particular concerning scholarly competition between Najaf and Qum and the challenge from clerics with a Khomeinist background – not to speak of the prospect of uneasy coexistence with *faqih*-claimant Ali Khamenei. All in all it might be risky for Sistani to throw in his lot with what may well prove to be ephemeral trends in Shiite politics; steering clear of the federalism question altogether – for instance by refusing to issue any fatwa for future referendums on the issue – may ultimately emerge as a safer tactic from the point of view of his professional interests.

¹⁰⁷ As long as sectarianism is kept out of the equation, finding specifically Islamic arguments against federalism would be no less difficult than justifying Iraq’s continued existence as a legitimate subdivision within an Islamic community supposedly striving towards complete integration and unity – except perhaps for the arithmetic argument that any increase in the number of subdivisions means a further step away from unity and therefore is deplorable. As far as ideas of territoriality in Shiism are concerned, the universalistic and pan-Islamic “every day is Ashura and every land is Karbala” has dominated Shiite political discourse since the days of Ayatollah Khomeini, although tracing the motto back to the Shiite imams of the classical age is much disputed. Nevertheless, Shiite clerics in both Lebanon and Iraq have demonstrated a fascinating attachment to the state system created by the Europeans in the Middle East in the twentieth century; see Visser, “Shi’i Perspectives on a Federal Iraq”, pp. 135–136

¹⁰⁸ In this question, it is quite difficult to grasp the position of the United States, which professes a commitment to the preservation of Iraq’s territorial integrity and has expressed an interest in a constitutional revision towards a better balance between the centre and the regions. US administrators seem to consistently cold-shoulder those Shiite movements which speak out in defence of the unitary state – and which potentially could be partners in creating a more moderate federal formula. True, these parties do not excel in the art of publicly thanking the US for toppling the Baath, but it is difficult to find empirical evidence that the more pro-American Shiite factions would have significantly different policies in basic questions such as the Islamic character of the system of government. An early reversal of the Islamisation of Iraq seems distinctly unrealistic with any Shiite-led government; the more modest aim of salvaging the territorial integrity of the country could however be achieved by working with moderate Shiite partners in the federal question. For Fadl Allah’s anti-federal and anti-sectarian position, see interview in *al-Sharq al-Awsat*, 23 July 2005; for Yaqubi, *al-Furat*, 22 June 2005; for Sadr, “Rafd al-fidraliyya fi al-‘iraq bi-wujud al-ihtilal” [Rejection of federalism in Iraq in the context of occupation], *al-Qabas*, reproduced at <http://www.saudiynet.net/printarticle.php?id=36289>, 9 February 2006. Layth Kubba of the Daawa movement expressed a preference for a bi-national Arab–Kurdish union (instead of federalism south of Baghdad) in *al-Bayyina*, 28 December 2005.

A third challenge for the future is the composition of Iraq's constitutional court, due to be settled by special legislation requiring a two-thirds parliamentary majority. It will be for this body to uphold the article of the new constitution which is probably dearest to Sistani: that no legislation shall contradict "the established rulings of Islam" (*thawabit ahkam al-islam*). It could become anything from a standard constitutional court made up of career judges to an Iran-style guardian council – all depending on the exact balance and selection procedures specified in the detailed legislation.

Sistani has previously given his explicit approval to the general principle that "no legislation shall contradict Islam". This harmonises with all his written scholarship of the 1990s as well. But he will now have to consider going beyond the very general Islamic imperative of the constitution – in the direction of putting into practice his ideas in specific judicial institutions in the new Iraqi polity. He will have to decide whether he should work actively to ensure clerical dominance in the constitutional court and thereby make it more similar to the institutions of the first Persian constitutional parliament or even the current guardian council of Iran. He will have to take into account to what extent he should demand or accept a role in selecting the religious judges who will sit on the court.

These may turn out to be tricky questions, for they touch on the role of the clergy to a much greater extent than does the federalism issue. On the one hand, the constitutional court looms like an iron-cage structure that could divest the Iraqi *mujtahids* of some of their charismatic authority. They could find themselves drawn into vexed conflict about Iraqi daily-life dramas, like the tension between their own preference for women wearing the veil in public – in this context some even advocate the limited use of physical enforcement – and the constitution's unconditional ban on domestic violence.¹⁰⁹ On the other hand, the traditional clergy will be a sought-after force by many Iraqis, as in such a court they could also act as a force of "moderation" towards younger and more radical Islamist jurors. More specifically, in this context, "moderation" would probably mean defending certain red lines that are well established in Islamic orthodoxy but which young neo-fundamentalist groupings (for instance the Sadrists) have at times sought to cross, like the principle of peaceful coexistence with non-Muslim minorities.¹¹⁰ Also in areas where the legal sources are silent or equivocal but where young radicals bombastically demand conformity to newfangled codes (banning many forms of shaving, outlawing any kind of "Western" music etc.), the traditionalists could play a truly "moderating" role.

¹⁰⁹ This issue illustrates some of the internal tensions in a Shiite political camp which seeks to legislate while also staying loyal to the *mujtahid/muqallid* dichotomy of Shiite orthodoxy. Typically, in Davos in late January 2006, Hammam Hammudi announced that his parliamentary bloc would "neither legislate an enforcement of the veil nor prevent anyone from using it at their own free will". The proposition probably went down well with the audience in the Swiss skiing resort, but may have had a less enthusiastic reception in Najaf, where most senior clerics – Sistani inclusive – instruct their female followers always to wear the *hijab* in public. (Quotation from *al-Adala*, 30 January 2006). Another SCIRI member, Bayan Jabr, gave a no-nonsense account of the dynamics at work to a Kuwaiti newspaper in January 2004. He was asked, "aren't you afraid that in the long time the religious and political authorities [in Iraq] might merge and become similar to the Iranian situation, where men of religion and politicians are the same?" The answer was frank: "In our view, the discussion about the religious authority and the political forces is not valid, because we believe that we are a part of the religious authority. We do not think of ourselves as opposed to that authority. We are a wing of the authority." From *al-Ray al-Amm*, 19 January 2004 (FBIS).

¹¹⁰ Still, it seems unlikely that an orthodox cleric like Sistani would depart from well-established principles like considering the testimony of a non-Muslim inferior to that of a Muslim in many legal contexts.

If past experience is anything to go by, Sistani will adopt whatever measures are likely to bolster his professional position within the Shiite clergy – and seek to ward off any incursions into the field of Islamic jurisprudence by laymen or by young modernist Iran-educated *mujtahids*.¹¹¹ A practical solution might be to promote some very young *mujtahids* from traditionalist Najaf seminary backgrounds, who could act as liaison with the leading clerics – who for their own part would maintain their time-honoured position of complete autonomy. The expectation that Sistani should act as some kind of permanent wedge against a more Iran-like judicial superstructure for Iraq seems unrealistic; only an attempt at putting a *mujtahid* directly on the throne would be directly antithetical to the principles of the Najaf ayatollah.

Which cleric will carry on Sistani's legacy in Iraqi politics when he one day is gone? Perhaps the question is wrongly put. It assumes that a single cleric will rise to the same kind of prominence that Sistani currently enjoys, with the unanimity of a Roman Catholic conclave. Shiism, however, has historically experienced long intervals when several clerics were battling for scholarly pre-eminence,¹¹² and it may well be that none of the other Iraqi *mujtahids* routinely quoted as being next in line (Ayatollahs Fayyad, Najafi and Muhammad Said al-Hakim) proves capable of taking over Sistani's mantle. Most of them have occasionally echoed Sistani's insistence on a united, non-sectarian Iraq but they are today completely overshadowed by their more famous colleague.¹¹³ Certainly, to envision them as going any further than Sistani for instance in actively defending Iraq's national unity and territorial integrity seems far-fetched at present.

The result could be a post-Sistani power vacuum in Iraqi (and indeed global) Shiism with pronounced competition among several *mujtahids* and perhaps increased attacks on the bastions of traditionalism from younger generations. One constant of twentieth-century Iraqi Shiism may endure, though: Iraq's Shiites have consistently shown a preference for leadership by Najaf, whatever the stature of Shiite centres of learning outside Iraq. Muhammad al-Yaqubi, the cleric associated with the influential Fadila Party and a follower of the late Muhammad al-Sadr, could rise to become a very important figure; today he is quite unique in Iraqi politics in combining established *mujtahid* status with a willingness and a capability to assume a greater political role.¹¹⁴ This is the sort of synthesis that Iran's leader, Ali Khamenei, currently embodies, and it is the kind of Khomeinist fusion of spiritual and temporal power which Yaqubi's teacher Muhammad al-Sadr promoted in a specifically Iraqi variant.¹¹⁵

Of equal importance to the question of personalities is that Shiism during the course of the coming years will probably achieve an unprecedented degree of institutionalisation in Iraqi politics, through the constitutional court. It may seem embryonic

¹¹¹ *Mujtahids* are not a particularly numerous group in Iraq, so the prospect of someone from neighbouring Iran being invited is very real.

¹¹² For an overview, see Faleh Abdul-Jabar, "The Genesis and Development of Marja'ism versus the State" in Abdul-Jabar (ed.), *Ayatollahs, Sufis and Ideologues: State, Religion and Social Movements in Iraq* (London: Saqi, 2002), pp. 75–82.

¹¹³ One of the first issues in Iraqi politics in which Bashir al-Najafi came to public notice after the war was typically universalistic: he advised that even the slain sons of Saddam Husayn were entitled to a proper Muslim funeral, *al-Hayat*, 27 July 2003 p. 2.

¹¹⁴ The point about the relative scarcity of *mujtahids* in Iraq seems to be lost on many Western diplomats, who appear to overlook that most of the Shiite factions in Iraq have no *mujtahids* in their own ranks. The leaders of these factions follow and imitate more senior clerics – in non-political matters, many may look to Sistani but in political affairs the picture is probably more mixed and depends upon political orientation. It is a fair guess that large segments of the elites of the more pro-Iranian parties are personally in the *taqlid* (emulation) of the spiritual leader of Iran, Ali Khamenei.

¹¹⁵ Visser, "Shi'i Perspectives on a Federal Iraq", p. 150.

today, but with Islamists holding sway in the Iraqi parliament it has the potential to turn into an effective veto mechanism against un-Islamic legislation, with the final say on all laws passed by the Iraqi parliament. In retrospect, this development has an ironic twist to it, for Western powers involved in Iraq have tended to make a major point of the alleged difference between Iran and Iraq in that clerics do not claim executive power in Baghdad.¹¹⁶ In maintaining this interpretation, they may have underestimated the desire for Islamic legislation that is shared by a broad section of Iraq's Shiites – from Muqtada al-Sadr supporters to adherents of Sistani. They may also have exaggerated the difference between a system controlled by a single cleric (dismissed as “the Iranian theocratic dictatorship”) and a polity whose legislation may ultimately be controlled by a *body* of clerics (praised as the “fundamentally different Iraqi democracy”, even though its supreme constitutional court may well be clergy-dominated and dependent on an extra-systemic and latent supreme *faqih*, with secular judges reduced to an appendage).¹¹⁷ Overlooked is the fact that the majority population in both these countries share the ultimate goal of a society governed according to Islamic law; it is on the finesse of the methods for reaching the goal that varying interpretations of *wilayat al-faqih* come into play.¹¹⁸ Thus, instead of maintaining the fictitious model of Iran and Iraq as being two worlds apart with regard to Islamic politics, it may be useful for Western powers to prepare for cooperation with a regime in Iraq which will share many features with its Iranian neighbour – and that without being in conflict with its so-called “quietist” ayatollahs in Najaf.¹¹⁹

¹¹⁶ An example of how this interpretation is often linked to a notion of “Iraqi Shiite secularism” was captured in an interview with former British ambassador to Iraq, Jeremy Greenstock, in *The World* at BBC, 23 January 2006, 2000 GMT.

¹¹⁷ Constitutional proposals by Iraqi Islamists differ with regard to the exact formula for allocating seats on the court to religious and secular judges, but the proportion of religious judges tends to be 50% or higher. The clerics may probably benefit additionally from a greater measure of esprit de corps than their secular counterparts. See Visser, “Beyond SCIRI and Abd al-Aziz al-Hakim”.

¹¹⁸ Those clerics who have tried to enter Najaf with a message of secularism after 2003 have generally been met with hostility. They include Abd al-Majid Khoei (murdered by an angry mob in April 2003), Husayn Khomeini (visited briefly in the summer of 2003) and Iyad Jamal al-Din (now a member of Iyad Allawi's coalition list). Khomeini and Jamal al-Din were chosen to represent “voices of Islam” at a conference sponsored by the Norwegian government and the International Peace Academy on the second 11 September commemoration in New York in 2003 – an example of a strained attempt by Westerners at defining the sort of Shiism they themselves are comfortable with.

¹¹⁹ This is not an attempt to sow doubt about the fiercely independent, pro-Iraqi and (lately a bit less enthusiastic) pro-Arab stance of the Shiites in Iraq. Convergence in the field of political theory certainly does not automatically produce a programme of political amalgamation. But in retrospect, it does look as if a deliberate PR strategy towards Western powers – rather than Iraqi realities – was at the root of the adamant claims prior to 2003 that Iraqi Shiites had no interest in *wilayat al-faqih* whatsoever and that Shiism would have only limited influence on the system of government in a post-Baath Iraq.