

**Stanford**  
Law School



THE AMERICAN UNIVERSITY OF IRAQ  
SULAIMANI

**Introduction to the Laws of Kurdistan, Iraq  
Working Paper Series**

# **Series Overview**

**Pub. 2013**

**Iraq Legal Education Initiative (ILEI)**  
Stanford Law School  
Crown Quadrangle  
559 Nathan Abbott Way  
Stanford, CA 94305-8610

**American University of Iraq, Sulaimani**  
Kirkuk Main Road  
Raparin  
Sulaimani, Iraq  
[www.uis.ed.iq](http://www.uis.ed.iq)

# TABLE OF CONTENTS

<b>Preface to the Series</b> .....	Error! Bookmark not defined.
<b>INTRODUCTION TO THE LAWS OF IRAQ AND IRAQI KURDISTAN</b> .....	<b>2</b>
<b>I. Thinking about the Study of Law</b> .....	<b>4</b>
<b>II. Understanding Legal Systems and the Rule of Law</b> .....	<b>5</b>
A. The Rule of Law.....	5
B. Legal Institutions and Systems.....	7
C. Legal Traditions and Pluralism.....	9
<b>III. The Civil Law Tradition</b> .....	<b>9</b>
A. Overview.....	9
B. Fundamentals of the Civil Law Tradition.....	10
1. Sources of Law.....	11
2. Codification.....	12
<b>IV. A Brief Legal History of Iraq</b> .....	<b>14</b>
C. Ottoman Iraq (16 <sup>th</sup> Century to 1914).....	14
D. The British Mandate and the Kingdom of Iraq (1921 to 1958).....	15
E. The One-Party State (1958 to 2003).....	18
<b>V. Overview of Working Paper Series</b> .....	<b>20</b>

## **Preface to the Series: *Introduction to the Laws of Iraq and Iraqi Kurdistan***

Iraq and Iraq's Kurdistan Region is at a compelling juncture in their histories. In the wake of the transition to a democratic state, the country and region economy has prospered and its institutions have grown more complex. As institutional capacity has grown, so too has the need for a robust rule of law. An established rule of law can provide assurances to investors and businesses, while keeping checks on government and private powers and protecting citizens' fundamental rights. Institutions of higher learning, such as universities and professional training centers, can and should play a key role in stimulating and sustaining this dynamic. Indeed, education is foundational.

This paper is part of the *Introduction to the Laws of Iraq and Iraqi Kurdistan*, a series of working papers produced by the Iraqi Legal Education Initiative (ILEI) of Stanford Law School. This series seeks to engage Iraqi students and practitioners in thinking critically about the laws and legal institutions of Iraq and Iraqi Kurdistan. Founded in 2012, ILEI is a partnership between the American University of Iraq in Sulaimani (AUIS) and Stanford Law School (SLS). The project' seeks to positively contribute to the development of legal education and training in Iraq.

The working paper series devotes significant attention to pedagogy. By writing in clear and concise prose and consulting with local experts at each step of the writing process, the authors strive to make the texts accessible to diverse and important constituencies: undergraduate law students, lawyers and judges, government officials, members of civil society, and the international community. By discussing the Iraqi and Kurdish legal regimes and applying specific laws to factual situations, the authors model how to “think like a lawyer” for the reader. They also use hypothetical legal situations, discussion questions, and current events to stimulate critical thinking and encourage active engagement with the material.

These working papers represent the dedicated efforts of many individuals. Stanford Law School students authored the texts and subjected each working paper to an extensive editing process. The primary authors for the initial series including papers on Commercial Law, Constitutional Law, and Oil and Gas Law, were John Butler, Mark Feldman, David Lazarus, Ryan Harper, and Neil Sawhney (J.D., 2014), under the guidance of the Rule of Law Program Executive Director, Megan Karsh (J.D., 2009), and me. Jessica Dragonetti, Kara McBride, Cary McClelland, Neel Lalchandani, and Emily Zhang (J.D., 2015) authored papers primarily concerned with Iraq's engagement with international law. I also thank the former and current deans of Stanford Law School, Deans Larry Kramer and Liz Magill, for their financial support, and the Stanford Law School alum, Eli Sugarman (J.D., 2009), who acts as an advisor to the project.

The faculty and administration of American University of Iraq in Sulaimani provided invaluable guidance and support throughout the writing process. Asos Askari and Paul Craft in particular played a leadership role in getting the program off the ground and instituting an introductory law class at AUIS. Ms. Askari taught the first law class in the 2014 spring semester. Former presidents of AUIS, Dr. Athanasios Moulakis and Dr. Dawn Dekle, provided unwavering support to the project. And finally, a special thanks to Dr. Barham Salih, founder and Chair of AUIS, without whose foresight and vision this project would not have been possible.

Finally, the authors of this series of papers owe an extraordinary debt of gratitude to many thoughtful Kurdish judges, educators, lawyers, and others who work within Iraqi institutions for their critical insights. In particular, the textbooks received vital input from Rebaz Khursheed Mohammed, Karwan Eskerie, and Amanj Amjad throughout the drafting and review process, though any mistakes are solely the authors' responsibility.

ILEI plans to continue publishing working papers. All texts will be published without copyright and available for free download on the internet.

To the students, educators, legal, and government professionals that use this set of working papers, we sincerely hope that it sparks study and debate about the future of Iraqi Kurdistan and the vital role magistrates, prosecutors, public defenders, private lawyers, and government officials will play in shaping the country's future.

Erik Jensen  
Professor of the Practice of Law  
Co-Director  
Stanford Rule of Law Program  
Stanford Law School  
Palo Alto, California

# INTRODUCTION TO THE LAWS OF IRAQ AND IRAQI KURDISTAN

## I. Thinking about the Study of Law

Imagine that you are an advisor to the Deputy Prime Minister. The Prime Minister wants to improve public health in a poor region of the country that has been suffering from contaminated water supplies. When drinking water is contaminated or polluted, the people that drink it can suffer from a variety of illnesses.

You have tried to persuade the companies polluting the water to stop dumping chemicals in the water supply. You have increased funds to local hospitals and clinics treating people made ill by the contaminated water. Yet none of your efforts have worked to improve public health in the region. You have decided that there should be rules requiring businesses to dispose of waste so that it does not contaminate water supplies. In short, you want to *pass a law*.

**Law**, broadly defined, is a series of rules, often enforced by institutions, which govern the behavior of individuals and organizations in society. Law passed by a government through its legislature or parliament is called **statutory law**. You may also hear it called **codified law** or **state law**. As we will discuss later, statutory law is not the only type of law. A community may have its own rules and methods of enforcement that can be equally important or effective as statutory law. We call these types of laws **non-state law** or **informal laws**.

In your situation as advisor to the Deputy Prime Minister, you want the government to pass a law requiring businesses to properly dispose of waste, so you are interested in statutory law. This book will also be primarily concerned with statutory law, though we will note how non-state laws and legal systems interact with statutory law.

You have many issues to address before you can pass a law about water contamination. Who is responsible for passing such a law? Is it the responsibility of the national government or the regional government in which the contaminated water supply is located? Does the government have the authority to pass such a law? How should the law be worded to effectively accomplish its purpose of improving public health? If, once the law is passed, there is disagreement about its meaning, who is responsible for interpreting the law? How will the law be **enforced**, meaning what steps will be taken to ensure that people obey the law?

This paper and the larger working paper series address these and other questions. The book provides an introduction to the concepts of law, legal institutions, and legal systems, as well as to specific laws of Iraq and the Kurdish regional government. Discussions will address how statutory law can be used to resolve disputes or situations when people's rights have been

violated. Areas where the law may not adequately address conflicts or problems that arise in day-to-day life will also be identified. Throughout, you are encouraged to think about what you read as a lawyer would, **analyzing, interpreting, comparing, and contrasting** laws and facts with a focus on solving difficult problems.

This book will not provide simple answers to the many complicated legal issues that face Iraq. Rather, it will provide a summary of the current laws in place and introduce you to the legal and analytical tools you can use to understand current and future legal issues in Iraq.

## II. Understanding Legal Systems and the Rule of Law

### A. The Rule of Law<sup>1</sup>

What is law? The term cannot be simply or universally defined. Generally speaking, however, law refers to a **system of rules and guidelines**, which are enforced through social **institutions** to govern **behavior**. The law critically shapes politics, economics, and society in numerous ways, and also governs the interactions and relationships between people. Law is often used to refer to the formal rules passed by a legislature, and in fact that is the definition of law with which this Working Paper series is primarily concerned. But it must be recognized that law can also be informal and unwritten, enforced by the expectations of a community or social custom.

#### Laws vs. Social Norms

Laws are not the same as **social norms**. Social norms are the expectations of a certain social group that are enforced by that group. Norms can be just as binding and can exact the same amount of punishment when they are broken, yet they are not law. Law is different than norms because it is accepted across a coherent grouping, such as a state or a town, whereas norms are applicable through social convention to a less identifiable grouping. An example of a social norm would be that parents expect their children to live with them until they are married and to help out around the house. If the children do not do that, their parents may punish them. However, this is not a law and instead is a norm enforced in a social group.

Central to this Working Paper series is the concept of the **rule of law**. Despite its importance and widespread use of the concept by judges, politicians, and scholars, the rule of law has been described by Brian Tamanaha as “an exceedingly elusive notion” that is difficult to define.<sup>2</sup> Tamanaha himself provides the following definition in *A Concise Guide to the Rule of Law*:

---

<sup>1</sup> Much of this material has been derived from the *Introduction to Rule of Law* and the *Introduction to Legal Pluralism* by the Afghanistan Legal Education Project (ALEP), available at <http://alep.stanford.edu>.

<sup>2</sup> Brian Tamanaha, *On the Rule of Law* (Cambridge University Press, 2004), at 3.

The rule of law, at its core, requires that government officials and citizens are bound by and act consistent with the law. This basic requirement entails a set of minimal characteristics: law must be set forth in advance (be prospective), be made public, be general, be clear, be stable and certain, and be applied to everyone according to its terms. In the absence of these characteristics, the rule of law cannot be satisfied.

While there may be disagreement about the exact definition of the rule of law, most scholars agree about several of the reasons why the rule of law is important. Fundamentally, the rule of law serves two important goals: (1) it imposes limits on the power of government; and (2) it coordinates the behavior of citizens and other actors.

Ensuring the rule of law prevents a government from acting arbitrarily by requiring the government to *itself follow* the law. Government officials must obey the law when carrying out their duties. For example, Iraq has laws criminalizing bribery and corruption. Officials are thus breaking the law if they accept bribes, and can be prosecuted by the government. Even more broadly, the rule of law also prevents the government from *passing* certain laws. For example, the Iraqi Constitution prohibits torture. Since the government is bound by the Constitution, neither the Council of Representatives nor the Prime Minister can pass a law or issue an edict allowing torture. The basic point of the rule of law is to ensure that the power of the government is constrained by a transparent system of rules.

Implementing the rule of law is also important because it can make dealing between individuals more efficient and predictable. When a country adopts a clear set of laws regulating both government officials and private citizens, individuals are able to know in advance what actions are permitted and which are not. This can have positive economic effects; for example, foreign investors may be more likely to invest in countries with strong rule of law because they are confident that business contracts will be enforced. This can also have positive social effects, as individuals are less likely to resort to violence to resolve disputes if they believe the government will prosecute offenders according to law.

### **Other Definitions of the Rule of Law**

The United States State Department offers a much broader definition of the rule of law. The State Department includes certain governmental structures, institutions, and individual rights:

The rule of law is a fundamental component of democratic society and is defined broadly as the principle that all members of society – both citizens and rulers – are bound by a set of clearly defined and universally accepted laws. In a democracy, the rule of law is manifested in an independent judiciary, a free press and a system of checks and balances on leaders through free elections and separation of powers among the branches of government.

The World Bank offers yet another definition, one that stresses property rights and specific substantive areas of law:

Without the protection of human and property rights, and a comprehensive framework of laws, no equitable development is possible. A government must ensure that it has an effective system of property, contract, labor, bankruptcy, commercial codes, personal rights laws, and other elements of a comprehensive legal system that is effectively, impartially, and cleanly administered by a well-functioning, impartial and honest judicial and legal system.

### **B. Legal Institutions and Systems**

In order to implement a strong rule of law, countries need to have adequate and effective **legal institutions**. There are a wide variety of legal institutions that can contribute to the rule of law, some of the most important of which include:

- Independent courts and judges;
- Representative parliament or legislature;
- Bureaucratic organizations (administrative agencies);
- Law enforcement (military, police);
- The legal profession (lawyers, advocates, etc.);
- Civil society.

These legal institutions will be discussed throughout the Working Papers series in context, and covered in particular detail in **Working Paper 1** on Iraq's Constitutional System. The following table, however, provides a brief overview of some of Iraqi's legal institutions as background for later study.



<b>Institution Category</b>	<b>Iraqi Examples</b>	<b>Responsibilities</b>
Legislature	Council of Representatives	Pass, amend, and repeal laws
Judiciary	Federal Supreme Court, Iraqi courts, regional and governorate courts	Resolve legal disputes, interpret and apply laws
Executive	Prime Minister, Council of Ministers	Enforce (“carry out”) the laws
Bureaucracy	Government ministries (e.g., Oil, Finance, Defense)	Administer the laws in specific fields, develop regulations and further instructions
Legal Profession	Bar associations, lawyers	Representing clients in legal disputes, advocating for changes in the law
Civil Society	Non-governmental organizations (NGOs), labor unions, religious groups, citizens	Advocating for changes in the law and policies, representing citizens to the government

The combined network of legal institutions, formal and informal rules, and legal actors is called a **legal system**. John Henry Merryman, in his seminal work on the history of the civil law, described a legal system as an “**operating set of legal institutions, procedures, and rules.**”<sup>3</sup>

There are hundreds of legal systems in the world.<sup>4</sup> Perhaps most familiar are national legal systems like that of Iraq. Each of the 196 independent countries in the world has their own set of rules and institutions. Many of these countries have federal system or political subdivisions, like Iraq’s regions and governorates, which may also have their own separate legal systems. At an even broader level, transnational and regional organizations like the European Union have their own legal structure, rules, and set of legal institutions like the European Parliament. And finally, there is a global legal system organized around principles of international law and treaties between sovereign states.

Thus, Iraq – and even Iraq’s individual governorates – has its own particular legal system that differs from other legal systems in its specific institutions and laws. Yet most national legal systems share a number of features in common. Most importantly, they generally have a **hierarchy of legal sources**, beginning with: (1) a constitution or fundamental legal document, (2) primary legislation or statutes passed by the legislature, (3) subsidiary legislation, regulations, or instructions issued by government bodies authorized by the legislature, (4) practices upheld by the courts, and (5) legal principles and practices. This hierarchy will likely be difficult for you to fully understand at this point – Section III below will more clearly apply

---

<sup>3</sup> John Henry Merryman & Rogelio Pérez-Perdomo, *The Civil Law Tradition* (Stanford University Press, 3d ed. 2007), at 1-3.

<sup>4</sup> See “Legal System,” *Legal Information Institute – Cornell University* (2013), [http://www.law.cornell.edu/wex/legal\\_systems](http://www.law.cornell.edu/wex/legal_systems).

the hierarchy in the Iraqi context. Just keep this hierarchy in mind as you read through the various Working Papers to better comprehend and analyze how various aspects of the legal system interact.

### C. Legal Traditions and Pluralism

As discussed above, legal systems may be particular to each country, and cover a wide variety of specific rules ranging from contracts to commercial transactions to criminal law and so on. Scholars, however, have categorized various legal systems into several “families” that we call **legal traditions**. In other words, a legal tradition is a grouping of various legal systems that are not a particular set of rules about contracts, commercial transactions, criminal law, etc. Rather, they are a set of “deeply rooted, historically conditioned attitudes about the nature of law, about the role of law and society . . . and about the way law is or should be made, applied, studied perfected, and taught.”<sup>5</sup>

At a broad level, we can make a distinction between the secular legal traditions and the religious legal tradition. Religious law, such as Islamic *shari’a* law, is a very important legal tradition and plays a significant role in many countries, including Iraq. As you may know, *shari’a* is the dominant legal tradition in Iraqi family and personal status law, and is also highly significant in contracts, property law, and other areas of national law. Religious law is outside the scope of this Working Paper Series, and students are encouraged to undertake outside study in this area if interested.

The secular legal systems of most nations today can be split into two major legal traditions: the **civil law** tradition, deriving from continental European legal history, and the **common law** tradition, dating back to the legal system of medieval England. Iraq’s legal system falls primarily into the civil law tradition, and thus the following section of this Paper explores this tradition in greater detail.

## III. The Civil Law Tradition

### A. Overview

Iraq’s legal system fits within the more general legal tradition of **civil law**, a category which will be described further in the sub-sections below. To be sure, Iraq’s legal system cannot be said to be *only* a civil law system, as it is a mixture of many different legal traditions and customs. Other legal systems, such as *shari’a* law and the common law tradition, have also influenced the Iraqi legal order, most notably in terms of its constitution. Yet the secular legal “tradition in the Middle East is essentially one of civil law, with the Civil Code as the heart of the legal system”<sup>6</sup>,

---

<sup>5</sup> Merryman & Pérez-Perdomo, at 1-3.

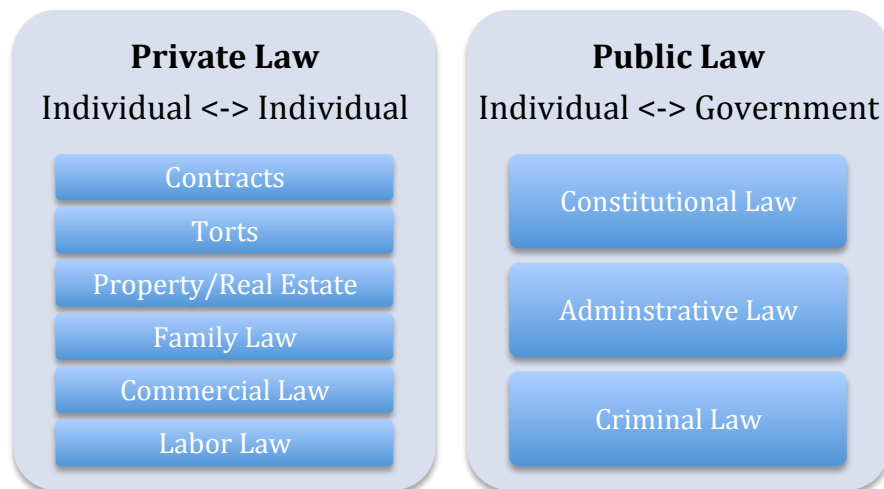
<sup>6</sup> Mallat, *Introduction to Middle Eastern Law* (2007) at 240.

and is thus the focus of this textbook. This section will provide a brief outline of certain significant aspects of that tradition. Students should note, however, that many of the concepts discussed in this introductory section will become clearer as they consider the various fields of legal study in greater depth.<sup>7</sup>

## B. Fundamentals of the Civil Law Tradition

The **civil law tradition** is often dated back to the *Corpus Juris Civilis*, or the “Body of Civil Law,” issued by the Roman emperor Justinian in the 6<sup>th</sup> Century A.D. The subject-matter of the first three books of the *Corpus*, concerning “persons,” “things,” and “obligations,” are almost identical to the civil codes adopted by Western European nations in the 19<sup>th</sup> Century, some of which served as the model for Iraqi laws.<sup>8</sup>

The civil law tradition was historically concerned with private **law**, the part of the law that deals with relationships between individuals, such as contracts, commercial law, and the law of obligations. However, as will be discussed later in this section and throughout this textbook, the civil law tradition also began to incorporate **public law** as the system of nation-states developed since the eighteenth century. Public law is the part of the law that deals with relationships between individuals and the state, such as constitutional and criminal law, and has become increasingly important as governments and bureaucracies have become larger and more complex. While modern legal scholars have noted that the lines between private and public law are less clear, the following figure illustrates generally accepted distinctions between the two.



---

<sup>7</sup> Discussion of earlier legal traditions (Mesopotamian, Islamic, etc.) is informative in Mallat, *Introduction to Middle Eastern Law* (2007) at 16-32.

<sup>8</sup> John Henry Merryman & Rogelio Pérez-Perdomo, *The Civil Law Tradition* (Stanford University Press, 3d ed. 2007), at 6-11.

The legal tradition to which the civil law tradition is most often compared is the **common law tradition**. This legal tradition derives primarily from the common law practices of England that deviated significantly from the civil European tradition.<sup>9</sup> The Iraqi legal system, and particularly its private law, does not share much with the common law tradition, and so this textbook will only briefly refer to laws and institutions in countries following the common law tradition. However, it should be noted that many legal scholars argue that the civil law and common law tradition are increasingly converging or combining, and that the distinctions between the two traditions are breaking down. Moreover, certain legal principles that were originally found only in common law countries have become commonplace in even civil law countries like Iraq.

The following sub-sections will briefly discuss two areas of the civil law tradition that are especially important for having an accurate understanding of the contemporary Iraqi legal system: (1) the **sources of law**, and (2) **codification**. Comparison will occasionally be made to the common law tradition for a comparative understanding of these concepts.

### 1. Sources of Law

The generally accepted theory of the sources of law in the civil law tradition recognizes **statutes**, administrative **regulations** (also known as instructions or guidance), and **custom**. Not only is this listing **exclusive**, in that the tradition recognizes no other sources of law, but it is also arranged in a **hierarchy**. In other words, a statute overrules a contrary regulation, and both a statute and a regulation overrule an “inconsistent custom.”<sup>10</sup> The hierarchy of sources can be visually represented as follows:



Statutes are laws that are enacted properly by the legislative power of a country, such as a parliament or House of Representatives. In the civil law tradition, the statute is the most

---

<sup>9</sup> See Thomas Lundmark, *Charting the Divide between Common and Civil Law* (Oxford University Press 2012), at 35-36.

<sup>10</sup> Merryman at 24.

important source of law. In theory, and historically, a legislature could have the power to enact anything. As you will learn, however, the legislature is nowadays generally limited in certain ways by its Constitution, as well as by of international legal norms.<sup>11</sup>

Administrative regulations refer to the rules and instructions issued by executive and administrative agencies. For example, the Ministry of Oil may issue a regulation setting the price of certain petroleum products, or a regulation that describes how companies should apply for certain permits. What is important to remember is that these agencies can make regulations only because they have been given this power, or **authority**, by the legislature. Moreover, the agencies can only regulate within the limits set by the legislature. In other words, the legislature can at any time pass a new law removing the power of the agencies to issue regulations and instructions. Thus, a regulation will always be lower in the hierarchy of the sources of law, because it depends on an underlying statute to be effective.

The final source of law in the civil law tradition is custom. The basic idea of custom is that “[w]here a person acts in accordance with custom under the assumption that it represents the law, that action will be accepted as legal . . . as long as there is no applicable statute or regulation to the contrary.”<sup>12</sup> There is a tremendous amount of legal scholarship within the civil law tradition analyzing custom. However, given the increasing scope of enacted statutes and regulations in modern nation-states, the importance of custom as a source of law has been described as “slight and decreasing.”<sup>13</sup>

This set of sources of law in the civil law tradition is often contrasted to the common law tradition, where **judicial decisions** (also known as case law or precedent) have far more weight. In common law countries, judges’ interpretations of laws may have as much force, or even more, than the statutes enacted by the legislature. In common law countries, therefore, the hierarchy of sources is less clear, because judges’ interpretation of statutes is sometimes equated to the statutes themselves. (This has sometimes been described as “co-operative lawmaking,” where the legislature and judiciary work together to make law.)<sup>14</sup> In civil law countries like Iraq, however, the text of the statute remains absolute, though as you will see later in this volume, judges still have a major role to play in applying the statute to a variety of cases.

## 2. Codification

Central to the legal culture of civil law is the concept of a **legal code** and **codification**. A code can be defined as a “type of legislation that purports to exhaustively cover a complete system of

---

<sup>11</sup> Merryman at 23.

<sup>12</sup> Merryman at 24.

<sup>13</sup> *Id.*

<sup>14</sup> Lundmark at 350.

laws or a particular area of law as it existed at the time the code was enacted.”<sup>15</sup> For example, a penal code will cover all aspects of the criminal law of a nation. Similarly, a commercial code will cover all aspects of the law governing commercial transactions. Unlike an individual statute, which may be enacted to deal with a specific issue or set of issues, a code essentially a compilation of statutes that is intended to be the definitive source of law for a certain legal area.

As discussed earlier in this section, the Justinian *Corpus* is often considered the original civil code – purporting to cover all aspects of private law. The development of “modern” codes in the Iraqi region date back to the *qanun*, or statutory books in the form of decrees, by the Ottoman Empire. These were replaced by the *Tanzimat* in the nineteenth century, by which the Ottomans systematized the laws across the Empire that were primarily of a “constitutional, real property, and commercial nature.”<sup>16</sup> The *Tanzimat* and the *Majalla* (discussed earlier) can be seen as the precursor of the process of comprehensive codification that became the norm throughout the Middle East, and in fact, most of the world not subscribing to the common law tradition. Finally, as discussed in the legal history section earlier, Iraq under British colonization underwent a process of “reception” of European civil law principles. Interestingly, while the British Empire followed a common law tradition, the British introduced civil law to Iraq and other areas of the Middle East, primarily based on the French legal tradition.<sup>17</sup>

The fundamental premise of a code is that it represents the *entirety* of the law in that field. In other words, a commercial code contains *everything* in the area of commercial law – there is no need for a lawyer, judge, or citizen to look at any other laws to understand the commercial law system. Why is this considered important? The creation of a code is motivated by the desire to draft “systematic legislation” that would be so complete, coherent and clear as to allow the “function of the judge to be limited to selecting the applicable provision of the code and giving it its obvious significance in the context of the case.”<sup>18</sup>

In a civil law country, the legislature collects the various laws in a certain subject area, and forms them into a systematic and organized single code. Once this process of codification occurs, the initial laws that were collected no longer are in force. Over time, the legislature will have to undertake a process of **recodification**, where the existing statutes are reformatted and rewritten into a new codified structure. This is necessary because as new laws are enacted and older laws are amended or annulled, the existing code may be full of irrelevant or conflicting sections. As codes have grown increasingly longer and complex, this process of recodification can take many years.

---

<sup>15</sup> Merryman at 30.

<sup>16</sup> Mallat at 121.

<sup>17</sup> Mallat at 240-41.

<sup>18</sup> Merryman at 30.

## IV. A Brief Legal History of Iraq

A comprehensive telling of the history of Iraq is far beyond the scope of this textbook. Indeed, even a discussion of the legal history of Iraq, which dates back more than four thousand years to the early legal codes of the Mesopotamian civilization, is too extensive and complex to cover in an introductory volume on Iraqi law. This section merely seeks to briefly introduce the relevant Iraqi legal history in order to provide students the necessary historical context to understand Iraq's current legal and political system.<sup>19</sup>

The relevant legal history can be broken up into several broad historical “phases”:

- A. the era of Ottoman Iraq, dating from the early 16<sup>th</sup> Century to World War I;
- B. the British Mandate period, dating from 1921 to 1932, and the independent Hashemite Kingdom of Iraq, dating from 1932 to 1958;
- C. the nationalist or socialist “one-party” state, from the 14 July Revolution in 1958 through the American occupation in 2003; and
- D. contemporary Iraq, dating from the removal of the Saddam Hussein regime in 2003 to the current day.

Please note that the contemporary history of Iraq, particularly dating from the enactment of the 2005 Constitution, is omitted from this historical discussion, as it is explored in detail in *Working Paper 1: The Constitutional Law of Iraq*.

### C. Ottoman Iraq (16<sup>th</sup> Century to 1914)

The Ottoman Empire governed Iraq for four centuries, leaving a significant impact on Iraq's patterns of government, law and the “outlook and values of the urban classes.”<sup>20</sup> When the Ottomans gradually incorporated the area of what is now know as Iraq in the early 16<sup>th</sup> Century, the Ottoman Empire was at the peak of its power and established governmental institutions and a uniform administrative system to its Iraqi provinces of Baghdad, Mosul, and Basra.

Important legal reforms took place during the late phase of Ottoman Iraq, primarily in the nineteenth century. In particular, the sultanate established direct control of the three provinces in the period of the *Tanzimat* (the reforms or reorganization) during the reign of Sultan Abuldemecid I.<sup>21</sup> To some extent, the Ottoman reforms were a result of concerns that the empire

---

<sup>19</sup> Most of this section derives from the following three excellent historical accounts: Adeed Dawisha, *Iraq: A Political History from Independence to Occupation* 12-14 (Princeton University Press, 2009); Phebe Marr, *The Modern History of Iraq* (Westview Press, 3d ed. 2012); Charles Tripp, *A History of Iraq* 45-46 (Cambridge University Press, 3d ed. 2007). A complete reading of these texts is highly recommended to students who are interested in a more detailed study of Iraq's modern history.

<sup>20</sup> Marr at 5.

<sup>21</sup> Tripp at 14.

was weak in relation to the growth of European power, and there was a “growing determination to reconstruct the administrative, legislative, educational and resources bases of the state, in large part on the European model.”<sup>22</sup> Particularly, significant reforms were undertaken during the tenure of Midhat Pasha, appointed the governor of the Baghdad province in 1869, such as the introduction and extension of a centralized administrative system into the Iraqi provinces – what commentators have called the precursor to the “administrative framework of contemporary Iraq.” Midhat also attempted to regularize the system of land tenure with legally confirmed rights of ownership.<sup>23</sup>

Despite the success of these reforms in many aspects, the weaknesses of the Ottoman legacy should not be overlooked. In particular, historians have observed that the Ottomans sought to recast local customs and institutions into the “Ottoman mold.” What this meant in practice was that the Ottomans would often create a native elite in their provinces that were distinct from the general population that adopted Ottoman principles and customs.<sup>24</sup>

While the particular laws and reforms undertaken in this era lost much significance with the fall of the Ottoman Empire at the end of World War I, the civil code of the Empire, known as the *Majalla*, remains important to an understanding of current Iraqi law. The *Majalla* was composed of sixteen books, and – modeled on contemporary European civil codes – covered almost all fields of civil law, except for family law which remained subject to Islamic law.<sup>25</sup> The *Majalla* served as the civil code for numerous countries in the Middle East, including Iraq until 1953, and has been called the “archetype for all codified Middle Eastern civil law.”<sup>26</sup> The civil law tradition and its emphasis on codification were discussed in greater detail in Section C.

#### **D. The British Mandate and the Kingdom of Iraq (1921 to 1958)**

After the end of World War I and the defeat of the Ottoman Empire, the British occupied Iraq and initially proposed governing it as a Mandate (a historical term meaning a territory governed by a colonial power under the authority of the League of Nations). The original mandate plan, however, was not followed after the Iraqi Revolt of 1920, and the British sought to administer Iraq as a semi-independent kingdom. Much of the governmental structure of Iraq can be traced to the Cairo Conference in March 1921, convened by Winston Churchill, the newly appointed colonial secretary overseeing British relations with its Iraqi mandate.<sup>27</sup>

---

<sup>22</sup> Tripp at 14.

<sup>23</sup> Marr at 6-7; *see* Tripp at 15-17 for a detailed discussion of Midhat’s introduction of the Land Law in 1869.

<sup>24</sup> Marr at 8.

<sup>25</sup> Mallat at 249. An English translation of the *Majalla* can be found online at [http://legal.pipa.ps/files/server/ENG%20Ottoman%20Majalle%20\(Civil%20Law\).pdf](http://legal.pipa.ps/files/server/ENG%20Ottoman%20Majalle%20(Civil%20Law).pdf).

<sup>26</sup> Chibli Mallat, *Introduction to Middle Eastern Law* (Oxford University Press 2007), at 245.

<sup>27</sup> Tripp at 45-46.



The British government was concerned with creating a strong central government that would still be malleable to British influence. The British thus decided to import their contemporary form of constitutional monarchy and parliamentary democracy to Iraq, choosing Faisal ibn Husayn, a Hashemite, as the King of Iraq.<sup>28</sup> After Faisal was enthroned through a carefully designed referendum process, a Constituent Assembly was formed and began in 1924 to draft a constitution establishing the structure of the government. This process resulted in the enactment of the **1925 Constitution**, which was Iraq's only permanent constitution until the current constitution was passed in 2005.<sup>29</sup>

The Anglo-Iraqi Treaty was signed in 1922, which gave Iraqis limited control of local policies while the British retained absolute power over military and foreign affairs. In reality, however, the British maintained considerable power over domestic politics through its influence over King Faisal, who essentially controlled the policy-making power of the government.<sup>30</sup> As some historians have put it, the treaty was the “backbone of Britain’s indirect rule” in Iraq.<sup>31</sup> The 1922 Treaty was eventually replaced by the Anglo-Iraqi Treaty of 1930, which provided for a two-year process for Iraq to become an independent nation. Many commentators have noted, however, that this treaty only envisioned “nominal” independence for Iraq, and primarily was concerned with preserving British commercial and military rights within the country.

Independence, according to some historians, “ushered in a period of transition and of troubles for the new state and its leaders,” as the Iraqi government had to confront a variety of internal problems they had avoided under British rule.<sup>32</sup> The sudden deaths of King Faisal in 1933, and thereafter his son Ghazi in 1939, only added to the difficulties. In 1936, for example, Iraq experienced its first military coup under Bakr Sidqi, which almost brought about the “collapse” of the constitutional regime established in 1925.<sup>33</sup> Successive coups and political troubles during this period resulted in various periods of authoritarian rule and suppression of civil society. Yet despite these issues, this “monarchical” period could be characterized as a fairly “liberal” period of politics, where political parties and opposition were allowed to form and engage in debate.<sup>34</sup>

It is important to recognize, however, that throughout this period and the fluctuations between authoritarianism and relative liberality, the 1925 Constitution remained in force as the basic law of Iraq until the end of the monarchical period in 1958. This constitution, while no longer in force today, is important as historical context for the current constitution. More importantly for

---

<sup>28</sup> Dawisha at 12-14.

<sup>29</sup> Dawisha at 15.

<sup>30</sup> Dawisha, *supra* note 6, at 16.

<sup>31</sup> Marr at 26.

<sup>32</sup> Marr at 37.

<sup>33</sup> Marr at 38-39.

<sup>34</sup> Dawisha at 104-05; *see also* Tripp at 127-34.

the purposes of current study of Iraqi law, the Iraqi government enacted a **Civil Code** in 1951 that became effective in 1953. The Civil Code of 1953 remains the governing civil code of Iraq, although the Code has been amended numerous times by successive governments. The Code was principally drafted by Abd El-Razzak El-Sanhuri, a French-educated Egyptian jurist who was also the primary drafter of the Egyptian Civil Code, and thus was based considerably on the Egyptian and French Civil Codes. While the Code incorporated Islamic legal principles, it is primarily modeled on the European continental codes, and thus fit within the long civil law tradition (discussed below in **Section III**).

The last decade of the monarchy (1948-1958) has been described as a “study in contrast,” where on the surface, “political life appeared stable” but underneath, new social and political groups “emerged to challenge establishment values and policy.”<sup>35</sup> Some of the motivation for this emergence dated from the Anglo-Iraqi War in the early 1940s, the second British Occupation, and the installation of a regent-led government unpopular with the Iraqi population. In addition, Iraq was encountering major economic, social and political changes, in particular, the development of the oil industry and the growth of new leftist and national movements. The signing of a new treaty with Britain in 1948, reaffirming British ties to Iraq, was strongly opposed by an overwhelming majority of Iraq, including the parliament.<sup>36</sup>

This period also saw the growth of Kurdish nationalist organizations concerned about the prevalence of pan-Arabism and possible domination by Baghdad.<sup>37</sup> Increasingly more “general pan-Kurdish demands,” such as the separation of Kurdish districts from the governorate of Mosul and the formation of a distinctive Kurdish governorate, were proposed. These demands would reemerge in a stronger form in the later one-state period.

At the end of the “monarchical” period, particularly starting around 1954 under the administration of Nuri al-Sa’id as Prime Minister, the regime began to exercise “rigid control of the public sphere” and dismantle political parties and civil society.<sup>38</sup> Interestingly, the elections of 1954 have been considered “the freest under the monarchy.”<sup>39</sup> However, immediately after the elections, Nuri dismissed the parliament and issued decrees limiting access to the political system, causing the opposition to be driven “underground . . . where it inevitably became more revolutionary.”<sup>40</sup> Moreover, martial law was declared and revoked at numerous points by the government.<sup>41</sup>

---

<sup>35</sup> Marr at 61.

<sup>36</sup> Marr at 65.

<sup>37</sup> Tripp at 108.

<sup>38</sup> Dawisha at 134-35.

<sup>39</sup> Marr at 73.

<sup>40</sup> Marr at 74.

<sup>41</sup> Tripp at 127-38.

Ultimately, this opposition spread to the powerful officer corps of the Iraqi Army. In 1958, when civil war broke out in Lebanon, the Iraqi government sent troops to Jordan out of concern that the conflict could spread. The troops marched instead on Baghdad and swiftly executed a coup ending the Hashemite monarchy. While the monarchy was certainly notable for a number of political and social weaknesses, its creation of Iraq's professional army and administrative bureaucracy and its formulation of basic Iraqi law did "much to create the modern Iraqi state."<sup>42</sup>

### **E. The One-Party State (1958 to 2003)**

The July 1958 Revolution by the Free Officers, led by General 'Abd al-Karim Qasim, ended the monarchical period and announced the birth of the Iraqi Republic. As you likely know, the democratic and liberalizing ideals of the Republic were short-lived and replaced by a series of authoritarian regimes that ultimately resulted in Ba'athist control of Iraq under Saddam Hussein. This period of Iraq's history was marked by military dominance, centralizing tendencies that negated attempts to "create provincial or societal autonomy," and purported revolutionary goals that in reality were limited and controlled by those who had seized power through force.<sup>43</sup>

The initial Republic, under the rule of Qasim and President Muhammad Najib Al-Ruba'i, was centered on a platform of Iraqi nationalism, and less focused on the pan-Arabism that had marked prior nationalists. He also was more sympathetic to the Iraqi Communist Party, lifting a ban against communist activities. Under Qasim, the government took on major egalitarian social reforms.<sup>44</sup> For example, several major land reforms were undertaken, culminating in the Agrarian Reform Law on 1958, as well as major investments in public education and other services. Yet this period was also subject to major political struggles, as the Ba'ath Party and its Arab nationalist ideology grew in popularity in reaction to Qasim and his communist allies. Moreover, Qasim furthered a militarized system of government that derived its power from an absolute leader who controlled the executive, legislative, and even at times, judicial powers. As historians have noted, the "most important consequence" of Qasim's rule is that he failed to "construct political institutions and processes to govern Iraq."<sup>45</sup>

Qasim was ejected from power in the 14 Ramadan Coup of 1963, which installed the Arab nationalists, including the Ba'ath Party, to power. Power shifted to some extent between the Ba'ath and the military/other Arab nationalists over the following five years, but the processes towards centralization persisted. Perhaps most important in terms of Iraq's legal system is the numerous nationalization laws of 1964, passed under Abdul Rahman Arif. These laws placed

---

<sup>42</sup> Marr at 78.

<sup>43</sup> Tripp at 143.

<sup>44</sup> Marr at 111.

<sup>45</sup> Marr at 112.

numerous sectors of Iraq's economy, including the banks, insurance companies, and textile industries, under the control of the government.<sup>46</sup> This period saw the transformation of Iraq from a generally free-market state to a planned state economy – a transformation that would last until the demise of the Saddam era.

In 1968, a true Ba'athist government was formed under the leadership of Ahmad Hasan al-Bakr, who executed a coup against the nationalist government of Arif. The Ba'ath consolidated power on its way to establishing a totalitarian state. For instance, the government enacted an interim “constitution” in 1970 that provided that the state have the authority to plan and guide the national economy. It also granted “dominant power” to the Revolutionary Command Council, whose members were generally former military officers and limited to the Ba'ath Party.<sup>47</sup> This highly centralized, command structure of government would persist under the regimes of both al-Bakr and Saddam Hussein, who came to power in 1979. To be sure, under Saddam Hussein, a National Assembly was established, demonstrating superficial trappings of democracy. Yet all political candidates had to be reviewed by a government election commission before being given permission to run, ensuring that Ba'athist allies would be elected.<sup>48</sup>

A detailed history of the Ba'athist period is outside the scope of this textbook, and students are encouraged to read the historical sources listed in **footnote 1** above for a more complete account. The development of the oil industry in the 1970s drastically changed Iraq's economic and social development. Numerous conflicts, from the Iran-Iraq War to the First Gulf War in 1991, had significant political and military consequences, including the regime's genocidal campaigns against the Kurds in the 1980s and the subsequent growth of an autonomous Kurdish region in the North. While these historical events are critical to an accurate understanding of modern Iraqi law, they require an in-depth study

For the purposes of this textbook, however, it is important to recognize that, in the midst of this authoritarian period, many laws were enacted that remain fundamental components of Iraq's legal system today (although many have been significantly amended). As you will learn later in this textbook, the current Constitution of Iraq provides that “[e]xisting laws shall remain in force, unless annulled or amended in accordance with the provisions of this Constitution” (Art. 130). Thus, numerous laws from this period remain the law of Iraq. As you can see, these laws relate to a variety of areas of the Iraqi legal system, ranging from criminal law to commercial law to

---

<sup>46</sup> Marr at 125.

<sup>47</sup> Marr at 138-41.

<sup>48</sup> Marr at 178.

the organization and structuring of government institutions. Some of the relevant current laws in Iraq dating to the one-party state are listed in the table below.<sup>49</sup>

Law	Year
Personal Status Code (Law No. 188)	1959
Penal Code (Law No. 111)	1969
Civil Procedure and Actions Law (No. 83)	1969
Regulation of Trade Law (No. 20)	1970
Criminal Procedure Code (Law No. 23)	1971
Real Estate Registration Law (No. 34)	1971
Public Prosecutor Law (No. 159)	1979
Civil Evidence Law (No. 107)	1979
Judicial Organization Law (No. 160)	1979
Labor Code (Law No. 71)	1987

## V. Overview of Working Paper Series

The concepts provided in this introductory paper can only be fully understood through a more detailed study of the numerous areas of law and its intersection with politics, economics, and society. Below you will find an overview of the remaining Working Papers that collectively will provide you a deeper level of familiarity with the laws of Iraq and Kurdistan. Nonetheless, you should keep the basic concepts and principles discussed earlier in mind, as they will often be central to even the most technical or specific legal question you encounter.

\* \* \* \* \*

**Working Paper: Constitutional Law of Iraq** is the first of a set of three Working Papers that will explore the Iraqi Constitution at a level of close detail. The Constitution may be a document that you often hear about but believe that it has very little impact on the day-to-day lives of average Iraqis. It may be tempting to immediately look to the laws most relevant to your stated issue, whether it is a friend accused of a crime or a dispute between two companies over a

---

<sup>49</sup> Primary versions of these statutes (in Arabic) can be found online at the Iraqi Legal Database, *available at* <http://www.iraqld.com/>. Certain English translations of these statutes can be found online at the Iraqi Global Justice Project, *available at* <http://gipi.org/library/primary/statutes/>.

contractual agreement. But the Constitution is the framework and foundation that the rest of the laws in the country rely upon. Understanding the Constitution will help you understand why the country operates it does, why the national and regional government is limited in what it can do to fix problems, and the various ways to enact change that you can use when you become a future policymaker, business leader, or advocate.

After the first paper's discussion of the broad Constitutional structure and some of the Constitutional history, **Working Paper: Federalism** will then turn towards the concept of federalism, which focuses on the balance of power between the national government (located in Baghdad) that is led by the Prime Minister and the President, and the regional governorates or local officeholders, like the KRG. Finally, **Working Paper: Rights** will discuss your personal rights that are included in the Constitution and further described in domestic laws. These include rights that you are likely most familiar with as a young person, including issues such as privacy, voting, speech and education.

**Working Papers: Commercial Law I and II** focus on issues that are essential to the economic growth of the country. The first paper provides an introduction to the commercial law of Iraq. In particular, it discusses fundamental concepts of commercial law, including contracts, obligations, and related concepts. The second paper focuses on investment and banking laws. Investment laws provide incentives to businesses that are willing to build factories or locate their operations in Iraq. The banking law establishes the major rules that govern the operations of banks within Iraq. Understanding the investment law and banking law are essential to students interested in working in business in Iraq. In this paper we will also examine some of the legal framework behind the headlines to better analyze the important questions facing businesses and governments.

**Working Paper: Oil and Gas Law** discusses an important political and economic topic: Iraq's oil and gas law. Production of oil and natural gas is the most important sector of Iraq's economy. Iraq's oil and gas laws play a significant role in determining how oil and gas revenues are distributed between oil companies and the government and how they are shared between the central government and the Kurdistan Region. As we will see, the federal and regional oil laws differ significantly, and there are major disagreements between the central government and KRG in this area. The oil and gas paper will discuss these areas of controversy and highlight some of the federalism issues discussed in the earlier papers on constitutional law.

Departing from the economic or business issues, **Working Paper: Criminal Law** will provide an introduction to crime and punishment and the values upon which the criminal justice system is based. Primarily, we will ask 'What is a crime?' and look at how the system determines which acts are more or less blameworthy, and what punishment is merited. But throughout our

exploration of criminal law, we will confront questions of guilt and innocence, and justice and injustice.

\* \* \* \* \*

By the end of this Working Paper series, you should have a better idea of specific laws that might affect you, your family, or the company for which you work. More importantly, you should also have a better understanding of how to read and interpret laws, how to decide whether a law is likely to apply to your situation or not, and how to decide when it is appropriate to advocate for changes to the legal system.