

Framing the future of Iraq
Constitution-writing old and new

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Given the current difficulties the United States is facing while trying to reconstruct Iraq, many critics have voiced their conviction that the U.S. goal of consolidating democracy in Iraq is unachievable. This criticism is usually stated with a concurring worry over the length of time U.S. troops will need to stay in the country. Some point out that U.S. troops are still in Germany as a result of World War II. However, those who voice such worries ignore important details, namely, that U.S. troops stayed in both Germany and Japan for so long because of the cold war with the Soviet Union and the need to reassure Europe over Germany. In Iraq, US troops can leave once a democratic constitution is promulgated and elections are held. The main challenge in Iraq will be to devise a constitution which will create the political institutions necessary to consolidate democracy.

Since Iraq is divided along ethnic lines between the Sunnis, Shiites and Kurds, any democratic order must give each group their due political rights and participation. A purely federal system of government, however, would not be an effective solution because it would exacerbate the tensions among the groups, leading to internecine civil strife. In fact, the danger of harmful ethnic tension suggests that there is a need for political unity or a source of national cohesion to overcome societal divisions. It is also apparent that any form of Iraqi nationalism cannot be the source of cohesion or unity because the nationalist sentiments may run counter to American interests. In searching for a way out of this dilemma, a comparison with post World War II Germany helps to suggest a possible solution. After the fall of Nazism, West Germany could not have established national cohesion on the basis of German patriotism. Instead, the focal point for the nation became the Basic Law, its constitution. Like West Germany, Iraq is attempting a transition from totalitarian one-party rule to a stable democracy built on the rule of law. As such, a properly drawn-up constitution, with provisions similar to Germany's, could be instrumental as a rallying point for Iraqi unity. If such a constitution, and the political institutions it engenders, succeeds in achieving positive political outcomes, then the rule of law itself will be the foundation for Iraqi unity, thereby helping to ensure democratic consolidation.

The need for rule of law and stability suggests specific designs for Iraq's government. First, like the German constitution, Iraq should provide for a bicameral legislature, with fifty percent of the lower house elected by plurality election and fifty percent elected by proportional representation. In this way, the lower house of parliament will not be prone to party proliferation and ethnic division, as might happen in a purely proportional system of representation, but neither will one group dominate the institution. Thus, the major ethnic groups will have to share power between a small group of parties, with the expected result being increased cooperation. The upper house of the legislature should be derived from federal units, such as provinces, giving a voice to more

homogenized ethnic-based concerns, but its right to legislate should be limited, thereby ensuring that ethnic interests do not predominate in the making of law. Moreover, as an additional check on ethnic tensions and promotion of stability, Iraq should employ Germany's constructive vote of no confidence, signifying that the legislative representatives will have to agree on a new government before they can remove the current one. Finally, Iraq should instill a five percent clause, like Germany's, whereby only parties receiving five percent or more of the vote can qualify to sit in parliament. This provides a further barrier to any extremist political parties or groups, including radical religious factions which may be opposed to the new democratic order. Therefore, it is expected that this type of arrangement will yield a multi-party system grouped around three or four major parties, thereby promoting stability and cross-ethnic compromise.

In terms of other important institutional components that should be placed in the constitution, a degree of federalism should be introduced in the form of provincial or state governments. These federal units should not be divided along simple ethnic lines but should, in certain cases, include multiple ethnic groups within the same area, together with a local system of government which guarantees that one group does not dominate. The goal of such a measure would be to, once again, encourage cooperation and dialogue across ethnic lines, rather than leave each group to its own interests and thereby polarize the nation. An additional measure to ensure that the federal units alleviate, rather than increase, ethnic tensions, would be to place most of the power of legislation and administration in the central government, rather than in each federal unit.

While these recommendations present a seemingly effective formula for achieving democracy in Iraq, there remain significant challenges. First, while Germany mired under Nazi rule for twelve years, Iraq has been under Baathist rule for over thirty years. Consequently, even after denazification, there were still political, economic and bureaucratic elites which remained from the Weimar Republic to facilitate the democratic transition in West Germany. Iraq, after the regime of Saddam Hussein, possesses no such elite, especially since many areas continue to operate on tribal principles. Nor do Iraqis have a memory of living under a government based on the rule of law like elements of the German population had of Weimar even after Nazism. More importantly, other factors besides effective political institutions and a well-designed constitution can be instrumental in whether a new democracy will thrive or fail. The most significant of these is economic performance. West Germany's miraculous economic recovery in the 1940s and 1950s no doubt helped produce citizen satisfaction with democratic institutions and with the Basic Law.

Despite the challenges and unique difficulties inherent to the Iraqi experience, there do not seem to be any better options for most effectively implanting the rule of law and democracy in Iraq while simultaneously respecting ethnic heterogeneity and creating national unity. In terms of the issue of economic performance, it is clear that the US must do all it can to create a thriving Iraqi economy together with effective democratic institutions. A successful economy cannot by itself assure successful democratic consolidation, but it is highly important in making certain that citizens are satisfied with their constitution and political order, thereby allowing these institutions time to operate effectively and become ingrained in society. Moreover, while constitutional ratification and elections will signify that most US troops will be able to leave the country, a select force should remain to supervise the Iraqi police, together with a substantial group of U.S. and, if necessary, international, economic and political experts who will remain to

help Iraq produce a healthy economy and democracy. This level of commitment on the part of the United States will go a substantial way to making sure the Iraqis can properly work within the institutions and constitution which are to serve as the best hope for their national unity and the establishment of a democratic society founded on the rule of law.