



Developing Democracy: America's Involvement in Iraq's Constitution

Panel Summary

The negotiations over Iraq's new constitution were in many ways a lost opportunity, said several panelists during an event on Oct. 12, 2005 at Georgetown University.

If the drafting process had offered a genuine chance for more Iraqis to become involved with the framing of the constitution, there would have been a real possibility of engaging the Sunnis and weakening the insurgency, said Neil Kritz, the director of the Rule of Law Program at the United States Institute of Peace. He pointed to South Africa and Albania as two examples of countries in which an open drafting process lent legitimacy to the new constitution.

Kritz pointed out that the Shia had been fearful of the consequences of federalism before becoming involved in drafting the constitution, but during their engagement over an extended period of time, they began to see the upside of federalism – and ultimately became strong proponents of it. The same dynamic could have happened with the Sunnis, he said.

“There were some Sunni participants in the process who were actually starting to moderate some views, who were actually thinking about different notions of federalism,” said Kritz. “But there wasn't enough time for that evolution of thinking, and when there isn't time...people are forced into their extreme positions, rather than having the space to moderate.”

Nathan Brown, a senior associate at the Carnegie Endowment for International Peace, agreed that America's emphasis on sticking to deadlines had detrimental results. America had three primary goals for the Iraqi constitutional process, Brown said: promoting liberal democratic goals, drawing in the different factions to create a consensus document, and doing it all on time.

Unfortunately, Brown said, what would have seemed the least important goal – to do it on time – appeared to become the most important in the eyes of the Americans. Brown speculated that two reasons drove this dynamic. On one hand, “Some kind of deadline has to be there to force the factions to engage each other seriously,” he said. On the other hand, American domestic politics played a major role. “The Bush administration, since it brought down Saddam Hussein's regime, and perhaps you could say since it captured Saddam Hussein, has very little to show its domestic audience for achievements in Iraq.” Adhering to the constitutional deadline “had to do with convincing an increasingly skeptical domestic audience,” Brown said. “The other goals were partly sacrificed as a result.”

Another casualty of the abbreviated timing was the consensus-building effort after the constitution was completed, said William Spencer, the Washington director of the Public International Law & Policy Group and a member of an advisory team invited by the chair of the Constitution Drafting Committee to provide technical legal assistance on the new constitution.

“Most of the parliamentarians were very sad there was no time to build a good viable discussion,” he said. Despite a great deal of enthusiasm among the framers about hitting the streets to build support for the constitution after the drafting process was finished, Spencer said, the hurried timeline precluded an effective public relations initiative.

The process was also a lost opportunity due to the United States’ reluctance to use its leverage to forge a real compromise, Spencer said. Americans and international staff kept a “surprisingly low profile,” he noted. “Our guidance from the U.S. government was that this was for the Iraqis to negotiate and draft.”

Qubad Talabani, the representative of the Kurdistan Regional Government to the U.S., agreed that the drafting of the constitution had been “very much an Iraqi project.” “That is not to say that there wasn’t American input, evaluation and sometimes oversight,” he added.

Talabani also noted that American involvement in Iraqi politics was important. “Anyone that thinks that the U.S. should not be involved in the political development of Iraq is naive – naive in thinking that if left to our own devices, we could settle our differences and accomplish the difficult task of reaching a national consensus on controversial areas such as federalism, the role of religion in state, and the distribution of Iraq’s wealth,” he said. “Iraq needs the United States to be an honest broker in the process.”

The speakers agreed that implementing legislation and governmental institutions will be crucial in determining the constitution’s ultimate legacy.

The composition of the federal supreme court, and the training of its judges, will be an important area to watch, said Tad Stahnke, deputy director for policy at the U.S. Commission on International Religious Freedom. This court, Stahnke noted, has the responsibility of resolving the tension between the constitution’s religious and human rights protections and the expressions about the importance of religious law.

Brown agreed that the constitution could operate in a liberal democratic fashion, or in any number of other ways. “What is absolutely stunning in the draft Iraqi constitution is the number of even basic structures that are not determined by the text,” he said, citing the provision that the structure of the upper house of parliament is to be determined by the lower house.

As Iraq moves forward in interpreting the constitution, Talabani called for the U.S. to stay involved with process. All of the previous negotiations and discussions could be moot if one political party sweeps the elections and creates a constitutional court that would interpret the constitution one-sidedly, he said. “That is why the US is needed in Iraq: The US must work to preserve national balance, ensuring that one group or party doesn’t dominate the rest of the country,” said Talabani. “Our fledgling system, if left on its own, will undoubtedly crumble at the hands of the organized and the strong, as well as at the hands of the terrorists who wish to destroy our existence.”

The panel took place against the backdrop of constitutional amendments announced the day before that guaranteed the upcoming elected parliament an opportunity to review the constitution and that attempted to address some Sunni grievances. The amendments, Brown said, “offer a tantalizing taste of what might be a more consensual document.”

The panel was co-sponsored by the Project on Middle East Democracy (POMED), the Center for Contemporary Arab Studies (CCAS), and Americans for Informed Democracy (AID). It was moderated by David DeBartolo, a joint J.D. / M.A. in Arab Studies student and co-founder of The Project on Middle East Democracy (POMED).

“Developing Democracy: America’s Impact on Iraq’s Constitution” was the third event for POMED, an organization dedicated to examining the impact of U.S. policy on political reform and democratization in the Middle East.