



A Better Plan B for Iraq: Democratic Constitution-Making

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“New nations and radically new regimes that seek democratic credentials make writing a constitution a priority. How the constitution is made, as well as what it says, matters. Process has become equally as important as the content of the final document for the legitimacy of a new constitution.” Democratic Constitution Making, US Institute of Peace

The fallacy about current thinking on Iraq is about priorities. The first priorities are not order or water or electricity. Or rather these are but these are impossible to achieve in a political environment perceived by many to be illegitimate. Democratic engineering theory predicts (and events confirm) that order is contingent on the emergence of a governing authority that the Iraqi people considers more legitimate than any other possible one.

Everything, from order to basic services, will be easier to establish if Iraqis trust the government and if it is not possible to use the excuse of political illegitimacy for aggressive acts.

Achieving freedom through democracy

It is a paradox that billions of dollars and millions of man-hours are spent on war, but little is spent on an inventive way to use democracy as an instrument in itself. As originators of democracy engineering, a new concept that sees democracy as a powerful but misunderstood and underutilized “political technology”, it is frustrating to see people dying and taxpayers’ money wasted when there are better, easier, simpler, cheaper ways.

The real question is not "What price freedom?" which is used to justify adding huge debts on taxpayers' children, it is about how to achieve freedom in the most efficient way. Democratic engineering designs and implements processes with maximal legitimacy to create sustainable democracies. It naturally minimizes risks, which is not the case today.

The litmus test is simple: what process will engender maximal trust? The process should help to:

- heal the extraordinary trauma of the Iraqis after decades of tyranny, wars and a deadly embargo;
- weave patterns of trust to minimize risks when problems arise later on constitutional interpretation;
- convince Iraqis, the Muslim world and public opinion elsewhere that the process is just and fair, the best possible one;
- minimize the risks of foreign intervention and terrorism;
- be a pedagogical example, promoting a culture of democratic debate.

The best process that fits these criteria is a formal, participatory, transparent constitutional process. The final constitution should reflect a robust compromise. Transparency and public participation are the best way to strengthen that compromise. Iraq needs a constitutional patriotism strong enough that it will override dividing influences.

The process specifications lead us to the following design constraints:

- Speed (sooner rather than later).
- Duration (should last whatever time is needed).
- Continuity in time.
- Transparency (for maximal legitimacy and didactical effect).
- Inclusivity (for maximal robustness and legitimacy of the outcome).
- Neutrality (to avoid favouritism).
- Solemnity (to harness better impulses).
- Symbolism (to satisfy symbolic, psychological and spiritual needs).

Modern constitution-making is a two step process. Participants in the first step – a constitutional convention – are chosen arbitrarily, and in the second step they are elected. This is unavoidable since at the beginning, by definition, there is not yet an accepted legal framework for elections.

The validity and legitimacy of the participants in step 1 come from their representativity and diversity, and ultimately from public and political acceptance.

To be credible, the process for Iraq should be co-sponsored multilaterally, by both pro- and anti-war states. But for credibility reasons it would be better to avoid the United Nations and instead involve as sponsors democratic countries such as India, Brazil, Japan and South Africa, as well as Iraq's neighbours (to give them a formal stake in the success of the convention).

The results of the convention would be a broadly discussed and respected interim constitution creating a provisional Iraqi government, and spelling out the steps for free elections, including a referendum and national elections for the second big phase: a parliament that will function as the final constitutional convention (as in South Africa).

A constitutional convention for Iraq

Here is a concrete description:

Step 1:

An immediate public Constitutional Convention open to all Iraqi groups, televised, radio- broadcast and webcast, to arrive at a basic consensus about fundamental questions, with multilateral support. Though it sets a precedent which will be shocking to many, total transparency is the condition for public and political trust.

Number of participants: 500-600 Iraqi men and women, representing the entire spectrum (self-selected by Iraqis with no veto of foreign powers).

Minimum time: 2 to 3 months continuously, possibly with short interruption (starting right after Ramadan?).

Location: Rotating among major Iraqi cities to increase popular input (but in each place at least 2-3 weeks).

Ways to maximize public participation, legitimacy and accountability: One day a week, citizens express their views at the convention, symbolizing that it is accountable to the people.

Probable top issues: Structure of government (federalism vs centralism), relationship between religion and government, rights of minorities and of women.

Media: Full facilities for up to 3000 journalists. Probable viewers (TV): 50 million, most of them in the Arab world (hence a peaceful force for democratization). Probable listeners (radio): 200 million.

Probable surfers (webcast): 10 million.

Output: A provisional constitution with a roadmap and calendar for free elections and a representative Constituent Assembly.

Estimated cost: US \$100 million over 6 months including preparation and assuming 3 months duration, equivalent to less than 0.5% of what the US and UK will spend during that time.

Step 2:

Elections on the basis of the provisional constitution of a Constituent Assembly to put the final touches on the constitution.

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