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Scripting Iraq's future

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Should Americans write the new Iraqi constitution? Should Americans determine how Iraq is governed in the future? We Americans have a legitimate interest in making sure the new Iraqi constitution will protect the liberties of the people, and result in their future prosperity and a successful state. To those ends, we should insist on certain constitutional standards and safeguards before turning over power to the Iraqi people.

The modern world is filled with failed or partially failed states, and countries whose governmental systems have not delivered liberty and economic opportunity to their citizens. Fortunately, there are a number of countries that can serve as models for success, most notably the world's two oldest democracies, Switzerland and the United States.

"We hold these truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness." Most Americans and many other peoples believe this statement from our Declaration of Independence. Since we believe this to be true, then it is also true for Iraqis, and thus any new Iraqi government must be designed to protect liberty.

To protect liberty, the new Iraqi constitution must carefully confine the powers of the state. One way of confining the state is through the separation of powers among the executive, legislative and judicial branches of government. Parliamentary systems of government, as are commonly found in Europe, often have weak separation of powers between the executive and legislative because the majority legislative group is also the executive.

Switzerland has successfully solved this problem by giving most authority and responsibility to the local governments (separation of powers between levels of government). The regions (cantons) and towns and cities (communes) are strong, while the central government is weak. In centuries past, Switzerland was plagued with ethnic, religious and language rivalries, much like Iraq is today. The Swiss were almost all Christian, but these Christians had strongly held disagreements with each other. There were Catholics, Calvinists, Lutherans and many offshoots of these main groups. Iraqis are 97 percent Muslim but split between two main sects, the Sunnis and the Shi'ites. Within

these two main groups are many subgroups ranging from totally secular to extremely orthodox. Approximately 3 percent of Iraqis are Christian.

The majority of Swiss are German speakers, followed by French speakers, and a smaller group of Italian speakers. About three-quarters of Iraqis are Arabs, and one-fifth are Kurds, with smaller groups of Turkomans, Assyrians and Armenians. The Swiss achieved peace and prosperity by allowing each ethnic and religious group to be largely self-governing in their local areas. The same system could work in Iraq. For instance, the Kurds have been largely and successfully self-governing in their local area for the past dozen years under Western protection. They are unlikely to want to be tightly controlled from a strong central state based in Baghdad. Using the Swiss model, there would be no need for them to give up substantial local control. Other subgroups in Iraq are likely to find the Swiss model the least objectionable, given the alternatives.

Also, by phasing in local control region by region, as the local people and their leaders demonstrate they can responsibly manage their own affairs, the U.S. withdrawal can be an orderly and well-understood process.

Some Iraqis have expressed a desire for a theocracy. Humankind has had long experience with theocracies. Ultimately, they always fail and are incompatible with liberty. Devout groups should be free to come together and establish their own schools and other institutions, as long as those who wish to opt out are able to do so.

We Americans, for both the good of the world and the good of the Iraqi people, ought to insist that any new Iraqi constitution protect certain basic rights, such as freedom of speech, religion, the press, and the right to basic legal protection with due process. Such rights are known as passive rights, in that they do not place a burden on anyone else for the right to exist.

By contrast, many European constitutions (including the draft of the proposed EU constitution) are filled with active rights, such as the "rights" to good housing, medical care, a clean environment, jobs, etc. Such rights are nothing more than a wish list, in that they can only be granted by placing a burden on someone else, and thus ultimately are unenforceable. They have no place in a constitution and hence should be resisted.

Finally, economic liberty needs to be protected — including the right to acquire and own property, and not have it taken without just compensation — with the requirement that the state enforce private contracts that are entered into voluntarily and legally.

We Americans do not need to literally write the new Iraqi constitution; but, as we did in Japan at the end of World War II, we need to exercise a strong guiding hand and insist on certain principles, or we will have a new, failed state on our hands.

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