



MY PERCEPTIONS ON THE IRAQI
CONSTITUTIONAL PROCESS

Shiekh Dr. Humam Hamoudi

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We Iraqis are a people plagued by massacres, random killing, bombs, and fiery statements—all targeting the democratic and constitutional processes. According to my appraisal, the reason behind this is that we are swimming against the current of a backward region, which still lives in the era of early centuries where people are governed not by democracy and constitutions but by single families, parties, or individuals. We experience the crisis of our political reality in the nonexistence of democratic constitutions and elected regimes.

It was a difficult and historic birth for this new Iraq Constitution. This infant has bravely faced violent, wicked threats to its existence. With its bright, lovely face, it has challenged death, overlooking the dark smoke, bombed cars, and dark-red blood encircling us everywhere. To make matters worse, the proposed burial of this innocent constitution (the birth of dawn) has been carrying a lovely title and beautiful cover: to face and resist the occupation. By committing this crime, the wicked desire of the people of the region collaborate to murder the newborn constitution. But success will disclose the corruption and awkwardness of their regimes.

The powers of the region have used their oil revenues to tempt some pens and brains, who, instead of supporting this huge step and the new infant, attempt to deform it. These paid pens and brains call for giving up democracy; they favor authoritarian regimes and an untenable course. They pretend that the region would not accept the democracy, whilst the truth is that the rulers are the ones who are resistant to modern state democracy. Freedom, justice, equality, and participation in government are natural rights evolving with man; they are not to be granted or denied by an individual ruler.

This is what I understand concerning the birth of the constitution in Iraq and the challenges ahead.

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THE CHARGE OF NONPARTICIPATION OF THE SUNNIS

Some mention that the problem with the Iraq Constitution lies in the nonparticipation of the Iraqi Sunnis. Let me address this charge, and then deal with the main attitudes and points of disagreements therewith.

First, were the Sunnis excluded? Or did they themselves decide not to take part, although there was an open opportunity for participation?

Obviously, and in a few words, the Sunni leadership made a political decision to reject the offer to participate, despite many requests and appeals for them to take part. It is worth mentioning that Sayed Al-Sistani—before the formation of the Iraqi United Alliance (IUA)—had sent delegations to the Iraqi Islamic Party and the (secular) Al-Iraqia list, calling upon them to join a broad, nonsectarian, national alliance to establish a founding assembly in charge of writing the constitution. But the two parties refused this invitation. Moreover, the Iraqi Islamic Party (Sunni) refused to join the national assembly. Thus, all doors were open to the Sunnis and others, but they insisted on remaining outside the train.

Only once the train began to move did they make the decision to participate. With neither electoral nor official representation, they boarded the train, some of them reserving front seats. I maintained documentation concerning their participation—active sometimes and obstructive at other times—in all committees involved with writing the constitution. Some of the Sunnis' opinions were taken into account, and their rights were maintained.

But this doesn't mean that the majority is bound to consider all that is demanded by the minority; this would be adverse to democracy. I hereby challenge those who allege that the Sunnis were not given adequate opportunity by the committee to participate in writing the constitution.

QUESTIONS ADDRESSED IN THE IRAQI CONSTITUTIONAL PROCESS

The questions that constituted the core disputes among the Iraqi political blocs were as follows:

- 1) The new Iraq: shall it be one Iraq or an Iraq divided into states and provinces? A central Iraqi government or a federalist one?
- 2) The system of power in the new Iraq: shall it be parliamentary, presidential, or both?
- 3) Does the democratic system in Iraq grant one voice for every person, or shall it be a sectarian-conciliatory system?

These were the core disagreements representing the key political trends and the mode, nature, and management of power in the new Iraq.

1) *Shall it be one Iraq or an Iraq divided into states and provinces? A central Iraqi government or a federalist one?*

The administrative system of power in Iraq for over one thousand years was based on provinces and states. When the Islamic Army entered Iraq, Welayat was divided into the states of Basrah and Kofah. At the end of the Ottoman Era, it was divided into the states of Basrah, Baghdad, and Mosul. Then came the British occupation, which created a system of central power; this so-called “National Power” traced the same course for over a half century. This mode of power caused continuous infighting in Iraq, both in the north and south, political instability, and ethnic and sectarian oppression and injustice. Hence, the inclination of the elected elites and the majority of the people was to return to a system of states and provinces to get rid of the central system which caused disaster and instability.

It is worth mentioning that the Shi’a have so far outlined, via the statements of their religious references (Marajeahum) and politicians, that the power system doesn’t weigh much for them. This is based on the fact that they represent the absolute (numerical) majority, and that they would lose nothing, regardless of the mode of the power system (federal or central), provided that all Iraqis get equal opportunities in their choices on equal footing. The system should be open to all Iraqis, whether it be a system of federalism or centralized power. Discrimination in terms of this right brings oppression, invites condemnation, and causes problems.

Since the Kurds decided to adopt federalism after a long struggle, then federalism, according to the equality principle, is a right to which all are entitled, unless they refuse it.

The outcome of these issues? Iraq is a unified country—an Iraq of states, not one central state. This outcome is rejected by a minority of Iraqis, as well as all neighboring countries and the Arab homeland. They claim that federalism will lead to the breakup of Iraq! Then the question turns into a debate of intentions. The constitution does not bind federalism as an administrative system in Iraq; it only binds decentralization and gives the right to turn to federalism, once the provinces and governorates choose to do so with the participation of half of the population. If this occurs, this means that there is a strong, genuine determination and a definite desire for this transformation.

What certifies the unity of Iraq is that the oil and gas are owned by the Iraqi people and equally shared by all Iraqi individuals, regardless of the place of extraction and production. This concession encourages all governorates and provinces to maintain their linkage with the center and the federal government; this was stipulated in the constitution.

2) *The new Iraq: shall it be parliamentary, presidential, or both?*

In the light of the dictatorship experience under central power, which brought about a furious aversion to centralization and presidential systems because all matters are maintained in the custody of one president, the need has emerged to assign the same to the custody of the cabinet and prime minister, and to ensure that key decisions are enacted, controlled, and ratified by the Parliament—the representatives of people.

On the other side, there was an opinion that favored presidential power, to join Iraq under a strong presidency, directly elected by the Iraqi people and vested with broad powers to sustain the past situation and to realize the unity of Iraq.

The plurality opinion in Iraq was to get rid of the fancy of a single leader. Fear of a return to dictatorship made the most accepted view one that insisted on a parliamentary system. Although it heavily prejudices the Shi'a, it is still more feasible for Iraq and for all.

3) *Does the democratic system in Iraq grant one voice for every person, or shall it be a sectarian-conciliatory system?*

This question is still unsettled for some groups: they deny and curse sectarianism, but they simultaneously claim sectarian dues and a share in conciliation; the latter was emphasized in the constitution, along with the participation principle, representation of all components in all fields—legislation, implementation, recruitment, the army, and the judiciary—and the right of equal citizenship for all individuals. The constitution sets out guarantees to provide for participation and the equality of opportunities.

The constitution is based on the principle of individual citizenship, not on sects or ethnicity. It simultaneously asserts the intellectual, religious, and ethnic plurality of the Iraqi people and secures equality; it does not confine any positions in the state to a certain religion or sect, as is the case in many of the regions' constitutions.

The endeavor of the region, the Arabs in particular, aims at deviating from democracy—which is based on there being a voice for each person—and turning to a sectarian-conciliatory system (ethnic or sectarian), as it is in Lebanon. Therefore, some call, behind closed doors, for Taif—for an Iraq in which power is shared on a sectarian basis, as in Lebanon. This request is denied in the media by the Sunnis and all Iraqis, but it is called for in political discussions behind closed doors, and it is called for by the very same parties to safeguard the interests of the minority.

This crisis should be addressed by the Constitution Review Committee (CRC).

QUESTIONS THAT REMAIN TO BE ADDRESSED IN THE
IRAQI CONSTITUTIONAL PROCESS

There are a set of detailed issues, beyond the basic or fundamental, still to be discussed:

- 1) Iraq's Arab identity: some are reluctant to impose an Arab identity on Iraq, as an Arab identity is sometimes thought to cause oppression against minorities and other components. This problem was addressed skillfully, but the national Arab community still asks for more.
- 2) The meaning of Iraqi nationality and the entitlements that should come with it.
- 3) The representation of component groups in the Iraqi army, and mechanisms to achieve such representation.
- 4) Personal status: whether there is a diversity of laws and systems for different sects, or whether a single law dominates all Iraqis.
- 5) Powers of provinces: how disagreements should be resolved, and how powers should be shared and defined between the states and the federal government.
- 6) Constitutional oversight of laws: whether decisions are consequential or precedential, as in the difference between the European (French) and American approaches.
- 7) Oil and gas: the extent and scope of the provinces' powers in terms of production and extraction policies.

Many of these questions might constitute points of disagreement, but they can be addressed and settled under agreed-upon laws. Thus, they cannot be considered endless problems.

In addition to answering such questions, the CRC has been tasked with a broader opportunity for discussion and dialogue. To reach these goals, it was divided into three subcommittees: the first is a political one that deals with suitable issues and proposes answers to them, such as was mentioned at the beginning of this Essay. (For example, what kind of a new Iraq do we want?) The second subcommittee is a supplementary one, which looks to supplement some aspects of the constitution, like the Federation Council and the Judicial Power. The third is a drafting subcommittee for rereading the constitution and unifying its terms, in case of any differences.

CONCLUSION

There is a political insistence from the U.S. government, conciliating the Arab governments and others, on the necessity of amending the constitution. In fact, there is a kind of illusion, adopted by some experts interested in the Iraqi dossier who are unfamiliar with the Iraqi situation and its daily contingencies,

that the amendment of the constitution would put an end to the dissension in Iraq. To me, this is only an illusion fancied by its followers. The conflict in Iraq is an ideological, power-related one. The infidel (Takfiri) factions are rejecting the constitution in full—and even the idea of writing a constitution—as they argue that a constitution is dispensable.

The Saddamists and the remains of Saddam's Ba'ath party, backed by the Arabs, are against democracy in all forms, and the people are beyond their agenda. As was stated by an emir in the Arab region, they want Shura (consultative) representation and not a democracy of minority and majority. They are unfortunately favoring the awkward line and a return to a premodern state era. This will by no means happen, for the people, who have tasted the flavor of freedom following a century of oppression, will not recess to the humiliation of dictatorship, even if democracy entails considerable sacrifice. That is my reading of what is going on in Iraq, and Allah remains the best insider.