

## **Islam, Federalism and Oil**

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In early June last year, I sat with four members of the Iraqi Kurdish military high command in Baghdad, discussing their disappointment that the U.N. resolution endorsing the new American-led dispensation in Iraq had not mentioned Iraq's current constitution, the Transitional Administrative Law. Even in Iran and Syria the TAL, with its promises of federalism and thus its brief guarantee of Iraqi Kurdish hopes, had been greeted by Kurds with dancing in the streets.

Above the heads of Brushka Nouri Shaways and his lieutenants, tough veterans of the struggle against Sunni Arab aggression in their multi-ethnic state, I saw a pair of wooden-handled flails. Splayed against the white wall, the chains of the flails had a coating that looked eerily like dried blood. I thought maybe the implements were old torture weapons from Saddam's days, hung there by the Kurds to remind them of the aspirations of their people far to the north. "No, no," said the hard men. "Those are the things the Shiites use to whip themselves at their religious festivals." Blood, indeed. How, I wondered, could such a country stick together: an Arab sect, the Sunnis, divided mortally from the Arab majority, the Shiites, with a large, mountainous minority, the Kurds, recoiling against the lash of one and the flail of the other?

It might not be fashionable to admit that Iraq, 14 months later, still has not succumbed to civil war, communal violence, theocracy, or even a moderately popular uprising against the U.S.-led occupation, but nobody can say that the Iraqis have failed thus far to conduct a responsible constitutional process. Their leaders are still at the table, and for all the frankness with which the various sides, so unusually in the Middle East, are able to present their priorities, the rhetoric of their politicians continues to reflect a restraint that Americans would welcome from Howard Dean or Tom DeLay.

The remaining challenges at stake in the current constitutional negotiations in Baghdad deserve a closer look. Islam, federalism, and oil are the main issues.

While it might seem strange to some students of history and Middle Eastern culture that women's rights have been adopted as a principal litmus test for the success of the U.S. project in Iraq, the role of Islam in that country's future is, in fact, a very practical issue in the current debates. Coverage of the issue, however, has focused on a canard. Whether or not Islam is "a," or "the only," or "a principal," or "the principal" source of law in the proposed new constitution is not the point. Islam and Shariah have been interpreted in many ways over the last 14 centuries, and if there is one thing on which neocons and MoveOn.org can agree, it is that there is nothing scary about Islam per se. Meanwhile the new Iraqi document will certainly include, as do the constitutions of even the most repressive states, language guaranteeing the gamut of human and civil rights. What really matters as we assess the new Iraqi document is how it provides for the inevitable clash between these various promises.

For this reason, it is the new draft's language about Iraq's high courts that counts most as we assess Islam's proposed role in the country's legal affairs. Who appoints the judges on the highest court? Who fires them? What are the powers of the bench

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vis-à-vis the executive and judiciary branches? Constitutions, like holy books, are about interpretation, and Americans and Iranians alike know that their rights, or at any rate their freedoms, can hinge on the opinion of a handful of bewigged sages.

The matter of federalism is also not as simple, or as vexed, as it looks. Iraq is already a federal country, *de facto* and *de jure*. Iraqi Kurdistan is already autonomous, and the Shiite south, east and center represent 65% of the population. When push comes to shove and the time for rhetoric has passed, Iraq's Sunni leadership, such as it is, is unlikely to agree with Western critics of Iraqi democracy that a return to the centralized nightmare is practicable. For centuries under the Ottomans, Iraq existed relatively harmoniously in a federal form, with the three vilayets of Basra, Baghdad and Mosul (which was mostly composed of what is now Iraqi Kurdistan) under the loose administration of the Pashalik of Baghdad. That is how it is now, and it will not change between today and Monday, when the final document is due.

History and current realities aside, the federal question in Iraq is subject to two other truths that ultimately will deliver compromise from the Sunni Arabs. Both are overlooked in the current analysis. The first is the fact that if the current process fails to deliver a new constitution – either because a new draft does not emerge, or because it is rejected in October -- then it is the current constitution, the TAL, that will be the law of the land. And the TAL, which in terms of representative genesis and U.N. approbation is probably the most legitimate constitution in the Middle East, explicitly states that Iraq is "republican, federal, democratic and pluralistic." It goes on to refer to the "federal" nature of the state 26 times and to say, "Any group of no more than three governorates . . . shall have the right to form regions from amongst themselves." So the Sunni Arabs or any other group that blocks the desires of Kurds and many Shiites for a federal system in the new constitution will instead get the same result from the current one.

The Sunnis know this. Their practical beef with federalism is about the last main unresolved issue: oil. Iraq's oil is in the Shiite south and the Kurdish north, and while the Sunni Arabs might yearn for a return to their old ascendancy in a centralized state, they know they won't get it. They know that the most they can play for is a fair cut of hydrocarbon wealth. When the new document is produced, look for a guarantee of this as the key that unlocks a Sunni acceptance of the federal reality. The robustness of this guarantee will be a major determinant of the success of the new arrangement.

On a broader level, the key subtext to these negotiations is about what has happened since I spent time with the Kurdish commanders 14 months ago. Back then, it was the supreme Shiite leader Ayatollah Ali al-Sistani who had, via a personal letter to Kofi Annan, very nearly driven the Kurds out the entire project of a unified Iraq by seeing to it that the TAL was not even mentioned in the Security Council Resolution that ratified the current incarnation of the Iraqi state. Since then, much has changed. For one thing, the TAL has emerged as a real document. Its schedule for Iraq's democratic process, initially considered by many to be a mere

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paper formality, has proved to be more real in terms of practical politics than the car bombs of the Baathists and Wahhabis.

Perhaps more important, the leadership of Iraq's Kurds and Shiites, who only a year ago were so at odds that the Kurds very nearly abandoned the entire enterprise, have come to agreement on the basic principle that there can be no Iraq if any major group is forced to give up its present freedoms. If the Sunnis don't sign up to this dispensation, with its long and successful precedent under the Ottomans, they will be stuck with the status quo or left in an oil-less, landlocked Sunnistan of their own making, with little succor to expect from an America that is as weary of war as it is of Sunni intransigence.