

Iraqi Blueprint for Tyranny?

The Bush Administration's Ambassador to Iraq, Zalmay Khalilzad, has praised the new draft Iraqi Constitution as "one of the most enlightened constitutions in the world, second to perhaps one or two others." The proposed Iraqi Bill of Rights certainly employs plenty of pleasant-sounding platitudes similar to the U.S. Constitution. But so did the Soviet Constitution, which consolidated tyranny.

Our system of government is premised on the self-evident truth that (in the words of the Declaration of Independence) "[M]en ... are endowed by their Creator with certain unalienable Rights...." Based on this premise, the U.S. Bill of Rights does not grant rights; it instead protects already-existing rights by prohibiting government from intruding on those rights. On the other hand, the proposed draft Iraqi Constitution, which would become part of that nation's constitution, is based on the fallacy that government grants rights.

The difference is fundamental, since if government "grants" rights, government can also withdraw or limit the rights it grants. And so the draft Iraqi Constitution, like the old Soviet Constitution, is replete with qualifications that make the rights it grants meaningless (e.g., "the law regulates the exercise of these freedoms"). That is, you have these freedoms, except when the law says you do not have these freedoms.

The proposed Iraqi Constitution is also reminiscent of the Soviet Constitution in that it proclaims so-called collective rights empowering the state, such as a right to healthcare or housing. Such "rights" can only be provided by taking from some to give to others, and inevitably leads to government control of healthcare, housing, etc.

Khalilzad minimized his own role in drafting the Iraqi Constitution, stating that "I am not going to them with a recipe for what their constitution ought to be." But Kurdish delegate Mahmoud Othman told the August 13 *Washington Post* that "The Americans say they don't intervene, but they have intervened deep.... They gave us a detailed proposal, almost a full version of a constitution." Despite Khalilzad's protestations, numerous press reports from the Iraqi delegates prove that the Bush Administration clearly wielded great influence over drafting of the charter.

Below are some of the rights enumerated in the proposed Iraqi Constitution. You decide whether the proposed new Iraqi Constitution empowers the people or the government, whether it guarantees individual rights as inalienable or revocable by the government, and whether it more closely resembles the U.S. Bill of Rights or the tyrannical model of the former Soviet state.

	U.S. Bill of Rights	Rights under the 1977 Constitution of the U.S.S.R.	Draft Iraqi Constitution
<i>Individual rights which restrict the state</i>			
Freedom of Religion	Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof... (1st Amendment)	Citizens of the USSR are guaranteed freedom of conscience, that is, the right to profess or not to profess any religion, and to conduct religious worship or atheistic propaganda. Incitement of hostility or hatred on religious grounds is prohibited. (Article 52)	Iraqis are free in their adherence to ... their own religion, sect, belief and choice, and that will be organized by law. (Article 39) Islam is the official religion of the state and is a basic source of legislation. No law can be passed that contradicts the undisputed rules of Islam. (Article 2) Entities or trends that advocate, instigate, justify or propagate racism, ... takfir (declaring someone an infidel), sectarian cleansing, are banned, especially the Saddamist Baath Party in Iraq and its symbols, under any name. (Article 7)
Freedom of Speech and Press	Congress shall make no law ... abridging the freedom of speech, or of the press... (1st Amendment)	In accordance with the interests of the people and in order to strengthen and develop the socialist system, citizens of the USSR are guaranteed freedom of speech, of the press... (Article 50) Enjoyment by citizens of their rights and freedoms must not be to the detriment of the interests of society or the state... (Article 39)	The state guarantees, as long as it does not violate public order and morality: 1-Freedom of expressing opinion by all means, 2- Freedom of the press, publishing, media and distribution. (Article 36) Entities or trends that advocate, instigate, justify or propagate racism, ... takfir (declaring someone an infidel), sectarian cleansing, are banned, especially the Saddamist Baath Party in Iraq and its symbols, under any name. (Article 7)
Freedom of Assembly and Petition	Congress shall make no law ... abridging ... the right of the people to peaceably assemble, and to petition the government for a redress of grievances. (1st Amendment)	In accordance with the interests of the people and in order to strengthen and develop the socialist system, citizens of the USSR are guaranteed freedom of ... assembly, meetings, street processions and demonstrations. (Article 50) Every citizen of the USSR has the right to submit proposals to state bodies and public organizations... Persecution for criticism is prohibited. (Article 49) Enjoyment by citizens of their rights and freedoms must not be to the detriment of the interests of society or the state... (Article 39)	The state guarantees, as long as it does not violate public order and morality: ... 3-Freedom of assembly and peaceful protest will be organized by law. (Article 36) Entities or trends that advocate, instigate, justify or propagate racism, ... takfir (declaring someone an infidel), sectarian cleansing, are banned, especially the Saddamist Baath Party in Iraq and its symbols, under any name. (Article 7)

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Right to Keep and Bear Arms	A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed. (2nd Amendment)	None	(None) Forming military militias outside the framework of the armed forces is banned. (Article 9)
Right to Jury Trial	In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed ... and to be informed of the nature and cause of the accusation..." (6th Amendment)	(None, other than a vague requirement for a "trial") Citizens of the USSR are guaranteed the inviolability of the person. No one may be arrested except by a court decision or on the warrant of a procurator. (Article 54)	(None, other than a vague requirement for a "trial") Trial by judiciary is a right protected and guaranteed to all. (Article 19)
Right Against Search and Seizure	The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (4th Amendment)	The privacy of citizens, and of their correspondence, telephone conversations a, and telegraphic communications is protected by law. (Article 56) Citizens of the USSR are guaranteed the inviolability of the home. No one may, without lawful grounds , enter a home against the will of those residing in it. (Article 55)	The freedom of communications and exchanges by post, telegraph, telephone and by electronic and other means is guaranteed. They will not be monitored or spied upon or revealed except for legal and security necessity in accordance with the law. (Article 38)

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<i>Individual rights which restrict the state</i>			
Right to Face Accuser	In all criminal prosecutions, the accused shall enjoy the right ... To be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense." (6th Amendment)	None	None
Protection Against Self-incrimination	No person ... shall be compelled in any criminal case to be a witness against himself... (5th Amendment)	None	There is no recognition of any confession extracted by force or threats of torture, and an injured party may seek compensation for any physical or mental injury that is inflicted. (Article 35)
Protection of Private Property Confiscation from Government	No Person shall ... be deprived of life liberty or property without due process of law; nor shall private property be taken for public use, without just compensation. (5th Amendment)	None (see collective "rights" below)	Private may not be taken away except for the public interest in exchange for fair compensation. (Article 27)
Protection from Torture	Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. (8th Amendment)	None	All forms of torture, mental or physical, and inhuman treatment are forbidden. (Article 35)
Additional Individual Rights	The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. (Article 9) The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people. (Article 10)	Enjoyment by citizens of their rights and freedoms must not be to the detriment of the interests of society or the state... (Article 39)	Restricting or limiting any of the freedoms and liberties stated in this constitution may only happen by, or according to, law and as long as this restriction or limitation does not undermine the essence of the right or freedom. (Article 45)

	U.S. Bill of Rights	Rights under the 1977 Constitution of the U.S.S.R.	Draft Iraqi Constitution
<i>Collective "Rights" which empower the state</i>			
Socialized medicine Government control of life and death	None	Citizens of the USSR have the right to health protection (Article 42)	The state guarantees social and health insurance... (Article 30) Every Iraqi has the right to health service... (Article 31)
Government Housing Government control of shelter	None	Citizens of the USSR have the right to housing. (Article 44)	The state guarantees ... the basics for a free and honorable life for the individual and the family ... and provides them with housing... (Article 30)
Industrial Planning Government control of industry	None	The state protects socialist property and provides conditions for its growth (Article 10) The economy is managed on the basis of state plans for economic and social development.... (Article 16)	The state shall guarantee the reforming of the Iraqi economy according to modern economic bases... (Article 25)
A guarantee of a job Government control over household finances	None	Citizens of the USSR have the right to work (that is, to guaranteed employment and pay in accordance with the quantity and quality of their work.... (Article 40) It is the duty of, and a matter of honor for, every able-bodied citizen of the USSR to work conscientiously in his chosen, socially useful occupation... (Article 60)	Work is a right for all Iraqis... The law regulates the relation between employees and employers on an economic basis. (Article 22)
Nationalization of Land and Minerals Government control over resources	None	State property, i.e. the common property of the Soviet people, is the principal form of socialist property. The land, its minerals, waters and forests are the exclusive property of the state. (Article 11)	The state guarantees protection and preservation of the environment and its biological diversity. (Article 33) Oil and gas is the property of all the Iraqi people in all the regions and provinces. (Article 109)
State control of the family and women	None	The family enjoys the protection of the state.... The state helps the family by providing a broad system of child-care institutions ... by paying grants on the birth of a child, by providing children's allowances and benefits for large families, and other forms of family allowances and assistance. (Article 53)	[T]he state should preserve its (the family's) existence and ethical and religious value....The state shall guarantee the protection of motherhood, childhood and old age and shall take care of juveniles and youths and provide them with agreeable conditions to develop their capabilities. (Article 29)