

A Libertarian Critique of the Interim Constitution for Iraq

Duncan Bayne

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Introduction

The Coalition Provisional Authority has created the "Law Of Administration For The State Of Iraq For The Transitional Period"¹, which has become commonly known as the Interim Constitution for Iraq (henceforth "the Constitution"), in that it contains provisions for its own replacement by a permanent Constitution as part of the transition to Iraqi sovereignty. This article presents a Libertarian critique of those areas of the Constitution which are lacking, and a summary of the Constitution from a Libertarian perspective.

Preamble

"These people, affirming today their respect for international law, especially having been amongst the founders of the United Nations, ..."

The liberation² of Iraq was not sanctioned by the UN Security Council, and Donald Rumsfeld has stated that the liberation of Iraq was illegal under international law³. Either the framers disagree, or they are ensuring that Iraq doesn't have the freedom to liberate other countries in the way she herself was liberated.

¹<http://www.cpa-iraq.org/government/TAL.html>

²This article refers to the invasion of Iraq & the deposition of the Ba'ath party (and its leader Saddam Hussein) as "liberation". The term does not imply that the net effect upon the Iraqi people will be liberation, nor that the liberation was a justifiable use of the Coalitions defense forces. The term solely refers to the act of invasion & deposition of the Ba'ath party by the Coalition.

³<http://www.globalpolicy.org/security/issues/iraq/attack/law/2003/1120hawk.htm>

"This Law is now established ... until a duly elected government ... achieving full democracy, shall come into being."

Full democracy is exactly what a Constitution is intended to prevent - unlimited democracy is by definition incompatible with individual liberty. Admittedly, it is possible to interpret the phrase "full democracy" in other ways than to mean unlimited democracy, however the chosen wording is dangerously vague, and is not clarified elsewhere in the Constitution.

Chapter One - Fundamental Principles

Chapter One, Article 1 (B) Gender-specific language shall apply equally to male and female.

This is an excellent paragraph, as it prevents the use of gender-specific entitlements, and improves the clarity of the document. However, it is in direct contradiction with Chapter 4, Article 30, Paragraph C (henceforth "4.30.C"), which recommends political quotas for women. Quite how that paragraph should be interpreted in the light of 1.1.B is uncertain.

Chapter One, Article 3. (A) ... Likewise, no amendment may be made that could ... affect Islam, or any other religions or sects and their rites.

This paragraph is worded very broadly with respect to "affect[ing] Islam". It effectively contradicts other statements made within the Constitution; e.g. the Qu'ran accords different rights to women and men, e.g. in the case of inheritance⁴, but 2.12 prohibits such differences.

Chapter One, Article 6 The Iraqi Transitional Government shall take effective steps to end the vestiges of the oppressive acts of the previous regime ...

This Article is far too vague, and legalizes taxpayer-funded discrimination such as 'affirmative action', as it could be (and has been in New Zealand⁵ and elsewhere) argued that lack of education and employment amongst previously disadvantaged citizens are 'vestiges' that need ending by the Iraqi Transitional Government (henceforth "the I.T.G.").

Chapter One, Article 7 A) Islam is the official religion of the State and is to be considered a source of legislation. No law that contradicts the universally agreed tenets of Islam, the principles of democracy, or the rights cited in Chapter Two of this Law may be enacted during the transitional period. This Law respects the Islamic

⁴<http://www.usc.edu/dept/MSA/quran/004.qmt.html#004.176>

⁵<http://www.scoop.co.nz/mason/stories/PA0305/S00392.htm>

identity of the majority of the Iraqi people and guarantees the full religious rights of all individuals to freedom of religious belief and practice.

This Article confirms one of the fears held by Libertarians opposed to the liberation of Iraq by the Coalition - specifically, that the Coalition will merely replace a secular dictatorship with an Islamic theocracy, achieving little real increase in freedom for the majority of Iraqis. Although there was always the possibility that religious Iraqis would attempt to pervert a secular Constitution to their own ends, this Constitution starts out being based on a particular theology.

This Article also destroys any hope that the permanent Iraqi Constitution might be secular; because any Iraqi law must be in accordance with Islam, any future Constitution must also be in accordance with Islam. This Article dooms Iraq to be an Islamic state in perpetuity. It also prohibits the majority of freedoms enumerated within this constitution; e.g. 2.13.G prohibits slavery, whereas the Qu'ran explicitly endorses it⁶.

Furthermore, there is a contradiction within this paragraph - the use of the phrase "universally agreed tenets of Islam". At last count there were over 9 major Islamic sects⁷, which disagree on many aspects of the religion - e.g., even Al-Jazeera admits to hostility between Shiites and Sunnis (although predictably, they blame the Coalition forces for escalating it)⁸.

Chapter One, Article 6 (4) Opening schools that teach in the two languages, in accordance with educational guidelines;

This article implies, but does not state outright, that education will be regulated, and that a taxpayer-funded education system will be established. This implication is made explicit in 2.14.

Chapter Two - Fundamental Rights

Chapter Two, Article 13 (F) Each Iraqi has the right to freedom of thought, conscience, and religious belief and practice. Coercion in such matters shall be prohibited.

2.13.F is in direct contradiction with 1.7.A. A religious state (in this case, an Islamic state) which explicitly cites holy scriptures as a source for legislation cannot by definition extend freedom of religion to its citizens.

Chapter Two, Article 14 The individual has the right to security, education, health care, and social security. ...

⁶<http://www.usc.edu/dept/MSA/quran/024.qmt.html#024.033>

⁷<http://www.rickross.com/reference/islamic/islamic27.html>

⁸<http://english.aljazeera.net/NR/exeres/74EA2098-11C5-44F3-8829-FDBC80C86BB2.htm>

This Article is antithetical to the concept of natural rights; all of the 'rights' enumerated above are prescriptive rather than proscriptive. They require money to be provided in order to pay for the above 'rights' - in other words, the natural rights of some citizens may be violated by the I.T.G. in order to provide the proclaimed 'rights' of others.

Chapter Two, Article 15 (B) Police, investigators, or other governmental authorities may not violate the sanctity of private residences ... unless a judge or investigating magistrate has issued a search warrant ... In the event that a warrantless search is carried out in the absence of an extreme exigent circumstance, the evidence so seized, and any other evidence found derivatively from such search, shall be inadmissible in connection with a criminal charge, unless the court determines that the person who carried out the warrantless search believed reasonably and in good faith that the search was in accordance with the law.

2.15.B allows ignorance of the law (on the part of a Law Enforcement Office only) to be a defense against 2.15 violations. Even if an officer is clearly, objectively found to be in violation of 2.15, evidence discovered by that officer can still be admitted in court if the officer can convince the court that he didn't realize his actions were in violation. 2.15.B also provides for "extreme exigent circumstances" to be a defense, which is also open to abuse.

Chapter Two, Article 16 (A) Public property is sacrosanct, and its protection is the duty of every citizen.

This is pure coercion; making it the duty of every citizen to protect public property is tantamount to conscription.

(B) The right to private property shall be protected ... No one shall be deprived of his property except by eminent domain ...

Eminent domain is a concept ripe for abuse, as is happening now in the U.S.A. and worldwide⁹ - it is coercion on the part of the Government, as the citizen has no option but to relinquish his property in exchange for a non-negotiable amount of money.

(C) Each Iraqi citizen shall have the full and unfettered right to own real property in all parts of Iraq without restriction.

This directly contradicts 2.16.B, which states that property ownership may be terminated by eminent domain.

Chapter Two, Article 17 It shall not be permitted to possess, bear, buy, or sell arms except on licensure issued in accordance with the law.

⁹http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=32172

Again, this is wrong, and hypocritical - the Constitution of the U.S.A. has the 2nd Amendment specifically protecting the right to keep and bear arms. Available data¹⁰ demonstrate that private firearm ownership is an effective means of defense against crime, especially in areas with high rates of violent crime. 2.17 provides a means for the I.T.G. to completely disarm the Iraqi people by refusing to issue licenses. Disarmament through license refusal has already happened in parts of the U.S.A., e.g. New York City¹¹.

Chapter Two, Article 18 There shall be no taxation or fee except by law.

This is an open-ended Article; it in no way limits compulsory taxation, it simply provides for its legalization. When coupled with the 'rights' enumerated in 2.14, this provides for possibility of complete socialism, i.e. 100% taxation and all 2.14 'rights' provided by the I.T.G.

Chapter Two, Article 22 If, in the course of his work, an official of any government office ... deprives an individual or a group of the rights guaranteed by this Law ... this individual or group shall have the right to maintain a cause of action against that employee to seek compensation ... If the court decides that the official had acted with a sufficient degree of good faith and in the belief that his actions were consistent with the law, then he is not required to pay compensation.

This is a promising article; except for the obvious and subjective escape clause ("sufficient degree of good faith and in the belief that his actions were consistent with the law") it makes civil servants of all types liable for unconstitutional actions.

Chapter Three - The Iraqi Transitional Government

Chapter Three, Article 25 The Iraqi Transitional Government shall have exclusive competence in the following matters: ... (C) Formulating fiscal policy, issuing currency, regulating customs, regulating commercial policy across regional and governorate boundaries in Iraq, drawing up the national budget of the State, formulating monetary policy, and establishing and administering a central bank; (D) Regulating weights and measures and formulating a general policy on wages; (E) Managing the natural resources of Iraq, which belongs to all the people of all the regions and governorates of Iraq ... distributing the revenues resulting from their sale through the national budget (G) Regulating telecommunications policy.

¹⁰<http://home.comcast.net/~guy.smith2/GunFacts3.3Screen.pdf> 11

¹¹<http://www.packing.org/state/index.jsp/new+york+city>

This Article clearly states that the new Iraq will be a mixed economy, with all natural resources nationalized, and the Government able to regulate all aspects of commerce, currency, banking, and wages. It also stipulates need as a claim to natural resources, which is itself antithetical to natural rights, including the right to own property as stated in 2.16.C.

Chapter Four - The Transitional Legislative Authority

Chapter Four, Article 30 (C) ... The electoral law shall aim to achieve the goal of having women constitute no less than one-quarter of the members of the National Assembly ...

This contradicts 1.1.B ("... Gender-specific language shall apply equally to male and female ...") and 2.12 ("... all Iraqis are equal in their rights without regard to gender ...").

Chapter Four, Article 31 (B) A nominee to the National Assembly must fulfill the following conditions: (1) He shall be an Iraqi no less than 30 years of age.

This represents discrimination on the basis of age which is a violation of the rights of a citizen older than the age of consent. Unfortunately, 2.12 does not provide for equality on the basis of age.

(7) He shall have at least a secondary school diploma, or equivalent

Given that the Government has control of the education system according to 2.14, 4.31.B.7 is ripe for abuse; all that is needed to effect total control over the political system is to deny potential dissidents their qualifications. Again, it is unfortunate that 2.12 does not prohibit such discrimination.

4.31 is used throughout the Constitution to provide the minimum criteria for most forms of political representation - the two most significant being the positions of President and Prime Minister in 5.36 and 5.38.

Chapter Five, Article 36 (B) It is a prerequisite for a member of the Presidency Council to fulfill the same conditions as the members of the National Assembly, with the following observations: (1) He must be at least forty years of age.

This is another violation of human rights, in the form of discrimination on the basis of age, but more extreme than that in 4.31.B.1.

Chapter Five - The Transitional Executive Authority

Chapter Five, Article 38 (A) The Presidency Council shall name a Prime Minister ... (B) The qualifications for Prime Minister must be the same as for the members of the Presidency Council except that his age must not be less than 35 years upon his taking office.

Yet again, discrimination on the basis of age. Once a citizen has reached the age of consent, there is no reason to restrict his or her natural rights on the basis of age - indeed, the age of consent is the point at which he or she is deemed to have attained those rights in full.

Chapter Eight - Regions, Governorates, And Municipalities

Chapter Eight, Article 56 (A) The Governorate Councils shall assist the federal government ... Councils shall also have the authority to increase their revenues independently by imposing taxes and fees; ... (B) The Qada' and Nahiya councils and other relevant councils shall assist in the performance of federal responsibilities and the delivery of public services ... and collecting and retaining local revenues, taxes, and fees; ... (C) Where practicable, the federal government shall take measures to devolve additional functions to local, governorate, and regional administrations, in a methodical way. ...

8.56 opens the door to compulsory taxation by regional Government, and the empowerment of regional Government to a level similar to that of the I.T.G.

Chapter Eight, Article 58 (3) With regard to persons deprived of employment or other means of support in order to force migration out of their regions and territories, it shall promote new employment opportunities in the regions and territories.

8.58.3 compels the Government to spend taxpayers money to "promote employment opportunities". This is a fallacy - the Government can only spend money it has already taken at the expense of those already employed, who would otherwise spend it on goods and services of their choice, thereby promoting employment themselves.

Summary

If the I.T.G. complies with the Constitution in the formation of a permanent Constitution and a new Iraqi state, the citizens of Iraq will be perpetually chained to an Islamic state with strong socialist leanings. Individual rights will

be severely restricted, including the right to own property. If the ruling body resolves the contradictions inherent in the Constitution to give precedence to Islam, many of those rights (e.g. freedom of religion and equality for women) will be curtailed entirely. The Constitution is worded in such a way as to permit any degree of socialism and taxation desired by the Government of the day, and to allow its agents to use ignorance of the law as a defense against unconstitutional wrongdoing.

In supporting the formation of Government and a permanent Constitution based upon the "Law Of Administration For The State Of Iraq For The Transitional Period", the Coalition is doing the Iraqi people a grave injustice - they have rescued them from oppression at the hands of a despot, and then ensured that whatever system they build to replace him will be equally oppressive, and able to perpetuate itself by controlling political nominations and disarming the citizenry.