

Center for American Progress



DISCUSSION ON:

**“COUNTDOWN TO A CONSTITUTION:
IRAQIS DEBATE THEIR COUNTRY’S FUTURE”**

MODERATOR:

**GAYLE SMITH,
SENIOR FELLOW,
CENTER FOR AMERICAN PROGRESS**

SPEAKERS:

**LAITH KUBBA, SENIOR PROGRAM OFFICER FOR THE
MIDDLE EAST AND NORTH AFRICA, NATIONAL
ENDOWMENT FOR DEMOCRACY**

**REND AL-RAHIM,
EXECUTIVE DIRECTOR,
THE IRAQ FOUNDATION**

**NIJYAR SHEMDIN,
REGIONAL GOVERNMENT-USA
REPRESENTATIVE, KURDISTAN**

**12:30 P.M. – 2:00 P.M.
TUESDAY, MARCH 22, 2005**

**Transcript provided by
DC Transcription & Media Repurposing**

GAYLE SMITH: Good afternoon everybody and welcome to the Center for American Progress. My name is Gayle Smith. I'm a senior fellow here at the Center and I'd like to thank you on behalf of the Center for joining us today for what we think will be a truly helpful and enlightening event.

As we all know, the new Iraqi constitution is slated to be drafted by this summer and approved in the fall. Here in the United States over the last couple of years we've rapidly developed a huge stable of Iraq experts but I think, as we all know, real expertise, particularly on the issue as central as the upcoming constitution of Iraq, really rests with Iraqis. So we are delighted to be joined today by three experts, all from Iraq.

In terms of format I'm going to be asking our panelists some short questions and then we'll open it up to the audience. Let me now introduce our panelists and going from my left across the panel, first we have Laith Kubba, who is the senior program officer for the Middle East and North Africa at the National Endowment for Democracy. An Iraqi-American, he graduated from the University of Baghdad and obtained his Ph.D. from University of Wales. Among his publications is *Common Ground on Iraq-Kuwait Reconciliation*.

To his left is Ms. Rend Al-Rahim, the executive director of the Iraq Foundation. Known to many of you, she was Iraq's former representative to the United Nations and the Iraqi Chief of Mission from November, 2003, to December, 2004. She's the cofounder of the Iraq Foundation and the co-author of *The Arab-Shi'a: Forgotten Muslims*, published in 2000.

To her left is Nijyar Shemdin, the U.S. representative to the Kurdistan Regional Government. He has worked in Iraq, Lebanon, Canada, and the U.S. and participated in the State Department's Future of Iraq workshops that were put together prior to the war. He is a graduate of Al-Hickma University in Baghdad and obtained his MBA from the American University at Beirut.

As I said, I would like to start with some general questions and just ask our panelists to briefly address them and then we will open it up. In order to give us some background and a sense of the challenges, I'd like to ask each of you first what you see as the most critical challenges in forging the new Iraqi constitution, and what in your views are the real make-or-break issues?

And, Laith, if I may start with you?

LAITH KUBBA: Three to four minutes or –

MS. SMITH: Sure.

MR. KUBBA: Well, thank you. Let me first start by saying that my views are very much mine. They are not representing that of the National Endowment for Democracy because the Endowment has a huge program in Iraq, but I'd like very much to give my views as an Iraqi and as an expert, too, in the field. Also, to make a second general remark, but I think it's most relevant: as we are talking about the constitution-making process now, we must not detach this from the context of what's taking place in the country; the political culture, the challenges that are out there.

If we look at it in abstract or what is ideally is out there, I think it can be extremely misleading, so we have to look at it in a real light. And of course I tend normally to highlight maybe controversial or contentious areas, but that does not mean at all that the positive side and the achievements are not there. I think there are plenty of them, but it's most important we focus on the challenges because that is where effort should go.

Let me start, first, that the real purpose of the constitution in Iraq is not simply to produce a rubber stamp – a legal rubberstamp that would make the country shift from A to B. Legality is one thing; legitimacy is another. There is a rush to – of course since the occupation and the end of Saddam's régime, there has been a legal vacuum initially filled by occupation, then through a transitional process designed by the UN leading to the first elected assembly, and from assembly that should draft the constitution.

Having said that, the elections were most positive. They are – produced the first – the most legitimate body in Iraq's polity and structures, but there are many serious gaps that are out there, especially if it comes to drafting a constitution. You cannot simply draft a constitution based on a simple majority, overlooking conditions in the country. We all know there has been a lack of participation from one sector in Iraq – an important sector – either due to intimidation or due to political misjudgment. The Sunni areas by and large – three provinces had a very low turnout, very low participation, and you cannot draft a constitution with that community being absent. It simply will not work. It can be legal because there are 60 percent votes; after all it is a legal assembly. You can put it ultimately to a referendum and I'm sure that is going to be a big challenge, but we must not simply focus our eyes on the legality; we must think of the real purpose of a constitution is to provide the country with a framework that is legitimate in the eyes of the people, that will make the country move towards stability, that is inclusive. So in terms of purpose, this is point number one.

Any constitution that is going to be drafted now has to have clauses for future amendments. It cannot be a jacket simply put on the country now and suddenly or expected from politicians who are going to achieve for their communities or for themselves maximum powers. Assume that this must not be fixed, otherwise the country will break down. I think any constitution must have clauses on how to go about altering and amending these powers.

Number three, the current constitutional drafting process is taking place in a political context of political groups. They have filled the vacuum. They were the first – some were in a better position than others; they filled the vacuum. Now they are in the driving seat and they are without question going to draft a constitution that is going to reflect their will and their ideas, rather than the deep trends and currents in the country. So again, there ought to be a high participation outside the assembly from civic groups, from the media, from the international experts to make sure to help Iraq draft a constitution that is going to work.

And maybe the last quick remark I make in this opening statement is that after the constitution there ought to be elections, a legislative body, a set of laws are going to be passed and ultimately a set of regulations and application to these laws. The distance – the gap between drafting general constitutional notions and between applying them in real terms on the ground in different districts is too wide and there aren't many currently law enforcement agencies, independent judiciary, strong institutions that will make sure that the constitution is going to be effective.

So even if we can have and we can deliver a piece of paper that will provide that framework, we must not underestimate the challenges ahead and how it's going to be implemented. There are many forces that could derail this process. Just because a group of people see the light on what is best for the country does not necessarily mean if they put their vision on a paper, it's going to work as the challenges there are enormous. And Iraq needs every help from the Iraqis, from its neighbors, and from the international community at large.

These are my opening remarks.

MS. SMITH: Thank you, that's very helpful.

Rend, may I turned to you next?

REND AL-RAHIM: Yes. Thank you, Gayle.

First of all, I want to sort of add a little bit to what Laith has said to point out that this constitution-writing process is really part of a political evolution that is not going to start with the writing of the constitution, nor will it end with the writing of the constitution. The writing of the constitution is going to be a landmark step in that political evolution and I expect that evolution will go on beyond the writing of the constitution.

First of all, there is a universal acknowledgment that in Iraq we cannot have the politics of victor-take-all, and that regardless of what the elections produced the Sunnis and any other groups and communities that did not or were not able to participate in the elections must be involved in the constitutional process, in the drafting, in the negotiations for a new constitution.

And there is a very good reason for that apart from the desire to see a unified polity which has a single vision for Iraq's future. There is a very practical reason which goes back to the Transitional Administrative Law of Iraq which has a clause that says any three provinces can actually veto a constitutional draft if two thirds of the populations in those three provinces do not approve the constitution. So any three provinces, in which two thirds of the population does not approve the constitution actually have a veto power over this. This was drafted in the Transitional Administrative Law and at the time it was thought that only the Kurds would be able to avail themselves or would be able to take advantage of that veto authority. However, it is now clear – certainly it is clear to me and I'm sure that it is clear to many others that many other three provinces in the country can use that provision in the Transitional Administrative Law and can take advantage of it if it does not approve of a constitutional draft that is drafted in the next few months.

And so the desire for universal participation and the involvement of all communities is, as I said, not just a question of wanting a unified vision, but also a very practical requirement. I refer to the Transitional Administrative Law and I think we always need to go back to that because, in fact, I think when the drafters of the constitution are going to be looking at what needs to go into the constitution and what doesn't, or what issues to address, they are going to be looking over their shoulder at the TAL – at the Transitional Administrative Law.

And if that is a guide, I think we can identify a number of areas that will be very important to address in the constitution. They may or may not become contentious issues, some of them may and some may not, but I think that they are going to be crucial and there is going to be a great deal of debate in the country on them.

The first one I'd identify it is of course the issue of federalism versus autonomous regions versus local governments. And this is more than just the administrative structure of the country, by the way. We are talking here not only about administrative devolution but to a lesser or greater degree a political devolution and that is the crucial thing. Following up on that – on this issue of federalism or autonomies, there is going to be the question of the relationship of the center to the regions. What kind of relationship is it? Is it going to be a relationship where the center is weak and those regions are strong? How much authority does the center retain? How much is devolved to the regions and so on and so forth?

And, again, associated with this issue is going to be the distribution of resources. How are you going to allocate resources amongst the regions and between the requirements of the central government and the requirements of the regions and how do you weight the allocation of resources among the regions? Is it by populations? Is it by need? Is it because those regions are, in fact, where those resources arise? For example, is it because most of the oil comes from the South that the South should be entitled to a share of these resources regardless of need or population? Those kinds of considerations are going to arise in the framing of the constitution.

The next thing that I think is going to be very important is the question of what I would call power-sharing and the distribution of power in government. And what I mean by that is the kind of model that Iraq will want to follow. Is it going to be for example, proportional representation such as you have in Lebanon where you identify that the president will be of this community, the prime minister is of that, the speaker of parliament is of the other? We seem to be following such a system right now but the question is, is the system going to be continued?

Furthermore, do you also decide that a certain number of the parliament is going to be reserved for minorities? Is a certain number going to be reserved for women? Indeed, are the cabinet positions going to be allocated communally? Is this the system you are going to follow or are you going to follow a system of undifferentiated, universal citizenship? This is going to be, I think, one of the issues that will arise.

Related to this in some way are the choices that the makers of the constitution are going to have to make about the system of government that they're going to adopt. Is it going to be parliamentary? Who is going to have the greater power? Is it the parliament? Is it the prime minister? Are we going to have a unicameral or a bicameral legislature? How is that going to be chosen and so on and so forth? So sort of the framework – the structure of government is going to be an important issue.

Obviously, the question of the relationship between Islam and the state is going to arise. We will probably address this later; I don't want to talk too much about that. And then one of the important subjects is going to be the question of rights and particularly, civil and political rights. This is – and of course human rights; we'll lump them together. The reason this may become an issue of discussion and debate is because we always have to look at the cultural context and the religious context in which we are working and there is going to be a discussion about the way in which these rights have to be balanced or have to fit into the cultural heritage of Iraq and the religion and traditions.

The final question that I have on my mind is to ask the question – a much broader question which may not seem to make sense, but is Iraq going to have one constitution or is it going to have several constitutions? If we go back to the system of federalism – autonomous regions, local governments – does that mean that each one of those is likely to have its own constitution? And if so, what will the relationship of the local constitutions be to the constitution of the center? Or, indeed, are we simply going to have one constitution and then the laws that are written by each legislature are different? What accommodations are we going to make on constitutional issues to the regions, whether it be a region in Kurdistan or whether it is a region in the South or indeed, in Western Iraq as is now being discussed.

I think I'll stop here, Gayle.

MS. SMITH: In case anybody didn't think there were enough challenges ahead, our list increases. Nijjar, may we turn to you please?

NIJYAR SHEMDIN: Sure. Thank you very much, and thank you both, Dr. Laith and Rend, for covering almost everything and leaving nothing for me. (Laughter.) But I'll try to come up with the things that hopefully they didn't.

All I want to say, as Dr. Laith said, that this is a continuous process. Constitution, number one. Number two, when we talk about constitution it is an overarching set of principles that need to be mentioned in the drafting and it is not – one should stay away from the details. It's not a civil code that they're discussing or a penal code and I think the little details will have to stay to the judicial system which has to be – and also the three powers, which is the executive and the judicial system have to be kept separate and the law should be above everything.

Of course, the constitution has to touch on the rights and we – as a Kurdish group in the negotiations, we feel that if the rights come – emanate from the individuals to the local governments to the central government, then that way the people will be running their own affairs and the government, whether its regionally or in the center, will be just like representatives implementing these rights on their behalf.

The other thing is what kind of a government are we looking for? Are we looking for a strong central government and then what have we done if we do that? And therefore it is important that the constitution address the fact that whatever they come up with, it has to be different what we had in the various years which led to the concentration of power in the center and therefore using the natural resources for everything other than – for buying weapons and all of that and everything other than developing the country financially, economically, and culturally.

Now, as far as the issues – and I think my colleagues did cover on that. Of course, Islam would be one issue. Kirkuk, normalization, and census and referendum will be another issue. Then, also, what are the rights of the regions versus the federal government if federalism is going to be the system for government in Iraq? And then we can go into details about the natural resources. First of all, who will be in charge on behalf of the various areas to implement it? And also, how do you divide the revenues and what kind of formulas do you have for that? And there are other things; for example, law enforcement and education and all that. Who would be in charge of it? Will it be – in other words the division of powers. Will it be the center or will it be the regions and so forth?

And that's all I have to say.

MS. SMITH: Thank you very much.

I'd like to tease out something I think all of you one way or another have referred to. If you read the U.S. media, the most frequent lens through which Iraq is viewed is one that emphasizes the centrality of ethnic and religious differences and focuses or seems to lean in the direction, if you will, of more regional autonomy than, Rend, perhaps the way you put it: universal citizenship.

And I wonder if you could tell us to what extent you think that emphasis is appropriate in terms of its prominence and also whether the constitution, from your perspectives, should be a vehicle in part to manage those contradictions and redress past wrongs or – and can it be at the same time a vehicle for forging a broader – to use Rend’s term – universal national identity?

MR. KUBBA: Shall I?

MS. SMITH: Please.

MR. KUBBA: Well, let me take maybe that second question to dig a little bit deeper into the issues we’re facing. To start with in terms of identities, where we are today we do have a polarized country. Communities are polarized. There are imbalanced positions. The north, where the majority of Kurds are, is more or less comfortable security-wise, financially, self-governing, fairly stable.

You look at the northwest – west is predominantly Sunni areas – they are in bad shape, they did not participate in the elections, rampant with violence. You look at the south: it lacks services, always lacked services in the past, and there is a huge legacy. New forces are emerging there. So communities within Iraq have gone different ways.

Now, where we are today and how did we get there is a totally different question. Could Iraq have gone another way? Was this – were Iraqis pushed in that position? Is this artificial or is it real? I think I’ll avoid answering these questions. The reality is we are here today and where are we going to go in the constitutional process for the next 10 years is the most important question.

My assessment is that if we want to look beyond the politics, and there is a lot of politics that is thriving on these polarized positions, Kurdish political parties have built their ideologies on Kurdish nationalism and they need the national cause to stay alive. The religious or Islamic Shi’a movement are predominantly in the South and, as I said, with the voting they’ve showed that there is a huge built-in interest; there is a lot of trust in religious organizations, so they are going to reassert that identity. And I think with the Sunnis they feel threatened with the whole – with the backlash.

Despite all these polarized positions, the reality is if you want to look beyond politics what Iraqi citizens – Kurds, Arabs, Sunnis, Shi’as – need most for themselves and their children, they all agree they need a strong state. They might differ in how to decentralize it and how to restructure it. They all agree it has to be democratic – elected. It mustn’t be authoritarian, religious or otherwise. But with some political leaders, they would like it should be democratic but democratic enough where they can preserve their powers and not lose it. And I think all Iraqis would like to see a level of respect to religion, but not necessarily a religious authority. In fact, they differ immensely what does a religious government mean.

But having said that, where Iraqis really differ is today there are two visions for Iraq, at least when it comes to the Arab-Kurdish side. There is a strong Kurdish national movement that is pushing for ultimately self-determination. It has expressed itself in various ways and I think politicians, whether they unleash this willingly or unwillingly, the reality is it has created a dynamic that is very difficult to reverse and is going to put leaders, the same Kurdish leaders who maybe used it initially to strengthen their negotiating position – they've created a reality that they cannot roll back and Iraq has to deal with. So, that is one, I think serious issue that is out there.

One other problem that exists today, again with the political parties as they try to manage communal politics, there is lack of trust. In addition to polarized position, there is lack of trust. There is the huge legacy of the past. The scars in the north of what happened in Halabja, the scars in the South of what happened during the uprising. And of course there is an element of foreign intervention one way or another that is playing on these communal differences and communal politics. All this is going to affect the drafting of the constitution not necessarily to the best interest of the citizens.

I think maybe a lot of the politicians or political parties are blinded by the shortsightedness of what they want to achieve in the short term rather than what is best in the country in the long term. But even if you want to the politics aside, the reality is, I think, Iraq has come to a juncture. There are competing visions that cannot be reconciled and the question is how those constitutional drafters are going to facilitate these changes to take place in the least violent way and the least costly way to Iraq and its people.

I'll stop there.

MS. SMITH: Thank you very much.

MS. AL-RAHIM: May I?

MS. SMITH: Yes.

MS. AL-RAHIM: Let me answer the first question, Gayle. You talked about these – is it accurate to do a reductionist approach to Iraq and say, well, Sunni, Shi'a, Kurds. The answer is both yes and no. The reality is that the politics that we see in Iraq today and the political parties that are players in Iraq today actually grew out of – first of all, most of them flourished in exile or flourished, let us say, in a mode of confrontation with Saddam's régime or with other régimes – successive régimes. In other words, they were formed under the pressure of some kind of persecution or another and persecution tends to always make people fall back on primary or primordial identities. You have a retrenchment of identity so that if you are persecuted, you are not persecuted as an Iraqi, but you are persecuted as a Kurd. You're not persecuted as an Iraqi; you are persecuted as a Shi'a. So the political parties that were formed were formed under this pressure of persecution; they retrenched into primordial ideas of Shi'a, Kurds, and so on.

And what we had seen – what is very interesting and troubling is that the new parties that have emerged in Iraq recently, after liberation – and I can think of two; one of them is the Iraqi-Islamic Party, and the other one which is not a political party which is the (Arabic phrase), the Muslim Council, the Council of the Muslim Clerics. Those are both political entities that are built around a Sunni identity and again they were built not under pressure from the old régime but out of fear of future pressure and persecution.

What we have not had in Iraq is the – or had very little of; let me put it this way – is the development of Iraqi national parties that are platform-based political parties as opposed to identity-based political parties. So whereas the political scene does actually endorse the Sunni-Shi'a-Kurd division, this in a way is an artificial, and I think a transitory, political stage because the mass of the population – the majority of the population do not necessarily only identify as Sunni or only identify as Kurdish. There is a community of Iraqis who see themselves as Iraqis, and I would actually locate that community more amongst – certainly within the cities, certainly amongst the educated classes, and the middle classes of course, and those are the classes that have been quiet so far for the last two years. They really have not been part of the political discourse. So I think this period of sort of identity politics hopefully is a transitory period.

But going back to the further question, we have to recognize that Iraq has experienced a revolution – it's not just a change of regime – a revolution that is no less dramatic than the French Revolution and the American Revolution. It has nothing to do with the Velvet Revolution that went on in Eastern Europe because what liberation did was not simply remove Saddam Hussein; it turned all the premises upon which the Iraqi state existed for 80 years – it turned them upon their heads.

This was a Sunni-dominated state. Whatever you say, we had the token Shi'a and so on. I think for a very brief period in the '40s and '50s, there was an attempt to redress that, but for the most part of our history this was a Sunni-dominated state with a very strong Arab identity and a sense of Arab nationalism running through it. We have pulled that completely apart. This is no longer a Sunni-dominated state, and the Sunnis not only have lost their dominance and their power in politics, they also have the economic clout in the country. So as they lost their political power they're also losing the economic power.

It is very difficult to talk in Iraq now about Iraq as an Arab nationalist country. Some people of course still do, but it goes against the grain. We are now talking about a multiethnic, multi-religious country in which the Arab identity is only one of the many. So we've sort of shattered all those premises and we are building a completely new state on very new concepts.

Inevitably there are winners and losers and many political factions in Iraq, particularly the Sunnis, are driven in their politics by fear. They feel they have been dispossessed, they perhaps fear and resent – or at least some of them may – the rising power of the Shi'a, and indeed they may also fear and resent the rising power of the Kurds in Iraq. So the Sunnis are driven by fear. The Kurds equally are driven by fear in

the sense that they do not want their past repeated. The Shi'a have this new opportunity, and the question is going to be, how do you come to some kind of agreement, some kind of pact – a national pact in which the fears are allayed, the ambitions are made realistic, and in which you can come up with a consensus view of how to go forward.

I do think that there has to be that kind of what's called an elite pact in Iraq, but that pact has to be embodied eventually in a constitution. The constitution is what gives documentary and written validation for whatever political pact. I think Iraq, for very many more years to come, is going to have to work by consensus and by coalition politics, not by winner-take-all. But the question is, how do we arrive at this consensus and how do we embody it in a constitutional arrangement?

MS. SMITH: Thank you. And I promise I'll come to you first for the questions.

MR. SHEMDIN: Oh, thank you. Well, I think Rend covered it all. I don't want to use her as an alibi for me not to say anything. I would like to say that the whole – this process of framing and drafting a constitution, it's a democratic exercise for the people of Iraq. The people of Iraq have not seen anything like this in the past four generations – 40 years – is to be immediately and directly involved in framing their constitution through their representatives or through their leaders or delegates going to the negotiations table. It is a healthy democratic exercise, and through that exercise I think the different parties will learn how to give and take and how to coexist and how to accept each other and how to compromise. This is very healthy.

So I'm saying this because I believe that drafting the constitution will be a vehicle and it will end up in a constitution that will be a vehicle to mend and to bring the different parties and groups and entities closer together, be it Shi'a, Sunni, Kurds, Turkmeni, Azeris, and so forth. The rights that's going to be entrenched in the constitution will protect everybody on an equal basis.

And of course I want to also point to the different constitutions, whether it is a regional one and whether it's a national one. We do have examples, especially in the United States, that the federal constitution is – it does not in any way contradict the rights of the people in the state constitutions. The rights of the states – of the people in the state constitution comes first. The federal system will support and enhance the rights. If the people's rights are less defended in the state constitution, then the federal government will offer more assurances.

As far as strong national movements, it is true, there are strong national movements in the North and in the South and so forth, and there is also a neglected middle class. Now, these – there is a reason for that, and the reason is because they are not sure of the future and what the future will bring them; what assurances will they have? It is hoped that the participation of all the people, as I said before, in drafting the constitution, will address that, and if it does that, then it will alleviate these things. A lot of people are afraid that Kurds want to separate and they want to exercise their right for self-determination. To that I will say, Ambassador Deng, who is an expert on self-

determination and wrote a paper, he said, in the countries which have guaranteed the exercise of the right for self-determination, that right has not been exercised because the people's rights are protected and therefore they don't need to do that. If people have movements or there is a national movement and they want to go under that umbrella to protect themselves, that's the reason.

So I'm naturally a hopeful person. I am a positive person, and I think – I mean, I'm going back to the king's time in the '50s. You know, people had rights, they exercised it, there were natural resources that were allocated to national development funds for construction. Monies were not being squandered or used to torture people or buy weapons and et cetera. This constitution hopefully will not allow these things to happen again. And again, it's not something that is going to be carved on stone. It is a gradual process, as my colleague said, and it will be open for amendment and it will be open for change as times change and as communities change and develop. But I am hopeful that this constitution that will come about will be a vehicle for understanding and bringing them to together.

MS. SMITH: We certainly share those hopes. And let me just conclude with one final question, then we will open it up and I will start at that end and come this way so as not to shortchange you.

A couple of you have referred in your comments to the relationship between religion and the state and how to deal with the issue of Islam and the new constitution. I wonder if you could each comment briefly on that question. In particular, are we looking at a scenario where the constitution will, in part, make reference to Sharia law; what does that imply and how do you see this issue?

MR. SHEMDIN: With regards to Islam as a source for basing the codes in the new constitution, of course, in Iraqi Kurdistan and the north, the majority of people believe in a secular system. They do not believe that – although the majority of the country is Islam, and of course the religion is Islam, and of course they are Muslim peoples and they practice their religion, but they do not want to have the Sharia dictating everything in what they do, whether it's marriage, whether it's inheritance, whether it's appearance and clothing codes, and so forth.

And therefore it is the position of the negotiating members representing that area that the Sharia should be one of the sources to be entertained when drafting the constitution, but not the sole one.

MS. AL-RAHIM: First of all, you know, talking about Islam and the state is not a question of black and white. A constitution can mention Islam in many different ways: the simplest way and the one that is most often seen in constitutions is that Islam is the religion of the state. And that would be simply a statement of a fact; no more. Or you can go to the other extreme. That would be one extreme; the other extreme would be to say that the Sharia law is the sole source of legislation. To my mind, neither extreme – neither a simple statement of fact nor the extreme of basing all laws on Sharia – is going

to be written into the constitution. Somewhere we're going to have to strike a balance in the middle.

We have a number of models around the Muslim world where there is a compromise struck between those two extremes, and I think that in fact what will happen is we will probably look at various formulations.

Two things I want to point to here. One of them is that the essence of coalition governments and consensus politics, and the beauty of that is that they tend to pull the extremes towards the center and create a moderating effect. Now, you may end up getting a rather weak government and so on, but it does tend to moderate extreme views because you've got to please everybody.

The other thing is this is precisely what happened when, in early 2004, the Transitional Administrative Law was being drafted. This whole issue in fact was debated extensively on the role of religion and legislation. Nobody had a problem with stating that Islam was the religion of the state but it is the question of its relation to a legislation that was a contentious issue. And eventually – and I have to admit that I was there at some of the debates that went on – eventually they arrived at compromise language that nobody was 100 percent happy with, but nobody was 100 percent unhappy with. So in all probability, this kind of compromise may be embodied in the constitution.

But going back to a question that I raised and that Nijjar alluded to, we may end up having different constitutions in Iraq, and we will certainly have different types of legislation in Iraq in the regions, and we may well find that in some – that a constitution gives that flexibility for some regions to be able to impose certain aspects of Sharia law; for example, banning drinking. I mean, this is the most obvious thing that comes to mind. They can't go so far as to mandate chopping off hands for theft because that would probably contradict the federal constitution, but there could be – the regions may have the latitude for practicing or implementing Sharia law in their regions in ways that do not conflict with the federal constitution, and we may well find that happening in Iraq.

MS. SMITH: Thank you.

We'll turn to you for the last word.

MR. KUBBA: Very quickly: when people talk about Shari, what comes to mind is the penal system and the family law. Those are the two most – issues that come to mind. I don't think anybody has it in mind that this penal system is going to be applied in Iraq in terms of cutting hands, et cetera. It's just not on anybody's cards and it's not likely to happen.

On family law, I think the role of religious institutions will be strengthened if not maybe reinstated. And, yes, this is going to be a contentious area, and I think there's going to be battles fought over it for many reasons. Here it's going to be a battle not about Islam, but about traditions – to what extent you keep traditions in the country.

What do we mean by an Islamic country or law, or a secular one? If the notion is that the ulama – the clergy – rule, I don't think anybody is advocating that. Sistani, in fact, the most respected authority, is against it. In fact, he's asking people who are wearing the cloth not to be in – not to take executive powers. So it's unlikely – unlike – not to be compared to Iran, for many reasons. The Shi'a tradition in Iraq, et cetera, and amongst the Sunnis, there is no inclination to have ulama ruling the country. So that's also out of the window.

When it comes to the identity of the country, 95 percent of Iraqis are Muslims – more than 95 percent. So without question, respect for Islam, and left to people to decide to what extent they want to have Islamic content in their public life. Certainly this needs to be regulated. There ought to be one sovereign constitution and will, but the question is how to counterbalance it with basic fundamental rights and rights of different communities in different parts of the country to live their own way. This can be worked out. There are many models worldwide that one can refer to.

Nearly 80 percent of Iraqis are Arabs, and I think ultimately this also is going to feature highly. One cannot separate it. When it comes to religion, it's not the general text in Islam that is problematic. The general text is quite acceptable. It's interpretations and practice. And so long as people have the power to decide how things are run, I think the country is safe. But when it's one person or just a small group of people or a political party claims that right and takes it away from people, this is when we have the problems.

The language that was used in the constitution in Afghanistan, that states Islam as the source for legislation is not, as I said, an issue. And Afghanistan is a far more problematic country than Iraq, and there are many other constitutions in the region that state Islam; but it has not, as I said, been a question because the real issue is in the practice, not in putting a general notion in the constitution.

MS. SMITH: Thank you very much, and let me thank all of our panelists very much for that extremely rich and informative analysis of the challenges facing Iraq as this new constitution unfolds.

I'd like now to open up for questions. If I may start with any members of the media that may have questions and then we'll open it up more broadly. And if you could identify yourself when you stand, and we do have a microphone that will come to you. Starting here in the front please.

Q: Thanks. I'm Rick Whittle with the Dallas Morning News. I'm just wondering whether any of you think that the deadlines set for writing the constitution and getting it approved by referendum, et cetera, are realistic.

MS. SMITH: Go ahead.

MS. AL-RAHIM: As I recall, the Transitional Administrative Law in which the political timelines and milestones are set forth does say that if it proves difficult or if more time is needed for writing and ratifying the constitution, there could be an extension of six months. Now, what I don't remember is whether the six months is for the writing only, but if there is a six-month – it's a six-month extension that is possible. There may be certain conditionality to it.

MS. SMITH: You're smiling. Do you want to add to that?

Q: Do you see this work getting done by – (off mike)?

MS. AL-RAHIM: Oh, I see. Do I see it getting done by – I can't predict. I don't know.

MR. SHEMDIN: Well, if I may comment. Realistically, as you know, two months a government hasn't been formed yet. The procedure has not been agreed yet on even how to draft a constitution. There ought to be a commission to what extent they rely on expertise. Is there going to be external input from independent organizations, others, to what extent the public can debate this? All these are not resolved. They're under pressure to deliver. I will not be surprised they will – the political groups will work out something and deliver it to the country on a referendum. It's going to be halfcocked; many holes in it. It's a strong possibility it can be rejected on the first run because, as I think Rend mentioned earlier, any three provinces can put a block into it.

And, yes, the way the process is structured in Iraq at the moment has produced a slow process that is not going to be conclusive; it's not going to be decisive. It's going to drag on as much as possible. And the political groups have big vested interests. Some are advantaged more than others and they want to exploit the process to the fullest.

So it's full of riddles. I think whatever they deliver, so long as it has clauses in it that will allow future amendments, we can proceed. If it's locked in, then such a constitution can push the country to more violence.

MR. KUBBA: I think it would be realistic to not build high hopes that by August 15 everything will be ready, but that there is a strong possibility that the drafting committee may need to extend it six months, according to the TAL, for no reason other than this is an exercise for the future of Iraq and it needs not to be rushed. The important thing is not meeting the deadline; the important thing is coming up with a work that will cater to the needs and the rights of the people.

MS. SMITH: Thank you.

Other – Joe, go ahead.

Q: Joe Onek, Open Society. I'd like to second Gayle's remarks about the quality of the panel – I think truly extraordinary. Two related questions. On the issue of the

possibility of communal rights versus individual rights, the American tradition of course goes one way and doesn't recognize communal rights, but there are democracies like India that have them. Do you think that the constitution is likely to – at least will consider and perhaps propose certain communal-type rights?

And relatedly, I believe there will be multiple constitutions. Will – in particular in the Kurdish part of the country, will they give the same structural protections to the minorities in, quote, "Kurdistan" that they're going to insist on from the national government, whether it be a two-thirds vote in the parliament or whatever kinds of structural things they get? Will they give similar ones to the minorities in Kurdistan?

MR. SHEMDIN: With regards to your last comment about the rights to the minorities in Kurdistan, it is a clear principle of the people of Kurdistan and their representatives that the majority will have to protect the rights of the minority, and it will be reflected in the constitution, and it is in the regional Kurdistan constitution.

MS. AL-RAHIM: The question of communal rights – group rights as opposed to individual rights is, of course, something that I believe is very important, but judging by the history of debates and discussions amongst Iraqis and the way that political discourse in Iraq has been taking place, both prior to the fall of the regime and since the fall of the regime, I think Iraqis tend to think in terms of communal rights – group rights. I think this is unfortunate, but perhaps I'm wrong. Maybe it's inevitable that we should be laying so much stress on group rights because many groups feel that they have been targeted over the decades for particular repression.

And we are, in Iraq, all speaking out of fear. Either our past experiences in Iraq lead us to fear the future, or the change that has happened leads us to fear the future. And I think many Iraqis will say that this contradiction or this juxtaposition of group versus individual rights is a false juxtaposition, that this is only something that exists in the United States, that it is perfectly possible to have both group rights and individual rights, and that you can craft a constitution, balancing those two and keeping them together. We will have to see, but I'm positive – certain that there will be a great deal of stress placed on group rights.

MR. KUBBA: Can I just express my point of view here? I'm staunchly and strongly against structuring the state of the politics of the country based on communal identities. I think it's going to be disaster because it will lead to bloodshed. The model we have in the region is Lebanon. It was designed by the French, and it's a jacket that the population has grown out of, but cannot grow out of it because it's fixed. Demography changes, population changes, and the state must remain above these communal fixed structures because it's meant to serve all.

The reality of Iraqi politics, there are leaders now who have built their interests on these – like they are tribal chiefs in a way, and so long as communal politics continue, those people will stay playing power and making money and doing all sorts of things. And this is not in the interest of citizens. It might be the case in Iraq because there are

those who are pushing for it, but a simple assessment can show clearly this is going to go against the interest of the people.

If there is a question, as the case I think in north Iraq in the Kurds – in Kurdistan – about a national identity, then I think this needs to be addressed head-on, not to alter the concept of citizenship. You can have a union of two federal states, you can look at various ways, but you do not alter the fundamentals of running a modern state that is meant to give a framework for thriving economy, thriving cultural rights, and just putting a jacket on communities. As I said, I'm one of the people who speaks strongly against it.

MS. SMITH: But do you have any strong views? (Laughter.) I'm kidding.

I think we had a question in the middle and then I'll go back a couple of rows from there.

Q: Thank you. Spencer Ackerman with the New Republic. I was wondering if the panel could address to what extent, either due to deadline pressures or to the difficulties of resolving some of the more intractable issues such as the substance of federalism – to what extent does the panel think that the constitution will ultimately resemble the TAL?

MS. SMITH: There's a lot of eagerness to jump on that one.

MR. SHEMDIN: If I understood you correctly, it is our hope that the principle of federalism will be adopted and that the constitution will cater to the establishment of all the principles that's involved in federalism, especially to try to make sure that the majoritarianism does not take over and subdue the interests of the minorities.

I hope I was able to answer your question.

MS. AL-RAHIM: Let me take a crack at it. First of all, I want to address something that Laith said. You know, the problem is, whether we like it or not – and I am not one of those that advocate – I mean, communal identity is good, provided it does not overpower a national identity. But the reality is this is what Iraq is like now and we cannot change it overnight simply by simply by wishing it so. This is why I say that the political structure that we have, or political parties, I hope and trust that this is transitory phase. So I was only describing, rather than assessing or evaluating.

Going back to the TAL, the TAL is a very simple and short document. And what it really does best is that it identifies the areas that will require attention in a constitution. In only very few passages does the TAL actually give answers. And I can suggest to you where it does. For example, on the compromise language that deals with the relationship between Islam and legislation, the TAL says that Islam shall be a source of legislation, and no legislation shall be promulgated that contravenes the universally acknowledged tenets of Islam and will not contravene the principles of democracy and human rights, da da da, da da da. It was a very broad formulation.

The other place where the TAL does give us something that we can really just pick up and put in the constitution is the bill of rights. It has a very extensive and thorough bill of rights, and if we're here expressing our views, I approve of it strongly, and so I would like it to be adopted. But in other areas – for example, Kirkuk on the issue of federalism, the TAL has pointers; it does not have solutions.

Would you agree with that? It has pointers.

MR. KUBBA: Let me make the last point. On security I think you've asked – I think if we were to have even a successful constitution and everybody approves it and the country approves it, the criminal networks and terrorist networks that we have in the country are not going to go away. That will take more effort. That takes institutions, buildings, security, et cetera. But if the constitutional process goes bad, then, yes, that will make the security situation worse.

MS. SMITH: I agree.

A question in the back?

Q: Elizabeth Drew of the New York Review of Books. Is all of this taking place as if the occupation does not exist? Is the existence of the occupation having an impact on some of the currents you've discussed? And is the United States, to your knowledge, trying to influence how this goes?

MR. SHEMDIN: Officially, sovereignty was handed over to the Iraqi governance and government, and therefore to that extent I think it doesn't exist. But then whether the United States is interfering, I think the United States may express an opinion if consulted and asked, and especially with regards to the withdrawal and the need to withdraw the forces, but other than that I'm not aware that they're interfering directly into the formulation and the process of drawing a constitution.

MR. KUBBA: On a positive note, I think the approach the administration adopted recently, which is more or less a hands-off, letting the process take its own course, is a good one. I think ultimately it's for Iraqis to sort out these issues themselves. If you're referring to the presence of foreign troops in Iraq, so long as there is no Iraqi army, I think it's needed. I cannot see the situation getting any better if troops were to be pulled out right now. Certainly one of the biggest assignments facing the new government is to rebuild the Iraqi army as soon as possible. That will lead to the reduction of foreign troops.

MS. AL-RAHIM: I just want to tell you sort of an anecdote. At the time of the elections, half the Iraqis that I spoke to were furious that the U.S. did not get involved, did not inject itself, did not influence the outcome, and simply stayed aloof. The other half of the Iraqis I spoke to refused to believe that the Americans did not get involved, did not inject themselves into the process. So this is how Iraqis are thinking. There are

those who want the U.S. to get involved because it's not, and those who refuse to believe that it is not getting involved.

MS. SMITH: Why don't we take – there's one here and then one in the back, and if you we can take those two together as our last set of questions.

Q: My name is Jonathan Morrow from the United States Institute of Peace. This discussion takes place at a point in Iraq's history where the government hasn't been formed, precisely for constitutional reasons. We know that the Kurds have put a set of constitutional requests or demands on the table. We don't know how those demands have been responded to yet, but they have delayed the formation of the government.

I guess my question is how do you, the panel, see those discussions playing out? What implications do they have for the process going forward – the constitutional process? And in particular, are we looking at a process where constitutional questions are decided in private by elites and then presented as a fait accompli?

And then a third question on the TAL: is it clear that the Sistani (list?) parties are committed to the TAL and all its provisions? Thanks.

MS. SMITH: Okay, we've got on in the back and then one over here, and then we're getting near the time we're going to have to –

Q: Stanley Kober with the Cato Institute. Much has been made of the difference between Iraq and Iran, but one possibility that occurs to me: if you have total power, you get total blame if everything goes wrong. Now, why would you want to take the blame if the roads aren't paved or whatever? The clerics in Iraq might say, we just want the veto power, the control over the issues that are important to us. Family law was mentioned. Let the other people take the blame when things go wrong in those other areas. Then the issue becomes who decides what falls under those important issues like the family law? Who decides where those boundaries are? Because that mechanism – who decides – would determine how democratic the situation is.

MS. SMITH: I there was a question over here.

Q: Nicola Pratt, the University of East Anglia in the U.K. Thank you very much for your comments. It's very interesting.

I'd like to ask a question specifically about women's participation in the drafting of the constitution, and in your opinion what are the challenges and what are the opportunities to ensure a minimum degree, say 25 percent, of women's participation in a drafting committee? Thank you.

MS. SMITH: And with apologies to people who may have remaining questions, in part because our friend did one of those three-in-one, I need to cut it off here so we end

on time. That's an awful lot of questions. Do you want to start at that end and work this way?

MR. SHEMDIN: As far as where the negotiations are going and the process of it, my last piece of information is that the Kurdish delegation have left Baghdad and they've gone to the North for no reason other than they are celebrating the national Noruz holiday. And it looks like probably not Thursday but Saturday they will come up with something, and that's the best I could come up with.

As far as the TAL is concerned, of course, as Rend said, it is a guideline for them and hopefully they will implement it.

As far as the women, there are two ways of looking at it. This high percentage, while it is not enough for them of course – some say that they represent 60 percent of the population instead of 50 percent, so 30 percent probably is not enough. But there are some women who are concerned that because of the way the lists were drawn up on a national basis, the women that were nominated to run for the elections belong to these groups and therefore they will be hearing the voice and the ideology of these groups, and therefore they will make things worse for the women rather than better – for some.

I'll let – my colleague, being a woman, can deal with that better, and she has just come back from Iraq.

MS. AL-RAHIM: I'll start with the women issue. So far, all the documents we have, whether they're related to elections or the TAL, had a 25-percent set-aside for women. Whether 25 percent of women are going to be involved in the writing of the constitution or not, I don't know. I'm not sure how we guarantee it. But really the issue is not just the percentage. I mean, I do want the percentage there. The issue lies somewhere else. First of all, do you have women who truly believe in women's rights, believe in the empowerment of women, believe that women should have a place in public life? That's one. The other question is, are the 25 percent women who are on any council or committee, are they simply "yes women" for their political parties and the political bosses or do they have their own mind? And thirdly, do these women have the clout; the moral courage, really; and the leadership ability to make their voices and their views heard? That is what I would like to look for rather than just numbers. So I don't think that probably answers the question.

On the clerical issue, that is a very delicate one. It is true that Ayatollah Sistani has said that we do not want any clerics and he does not want any clerics to be in executive positions, but, you know, it is not only executive posts that determine the course of a country. There are positions that have no titles, that are not designated by government, that have a strong influence on the way people think and the way people make decisions. I am persuaded that the alliance – the Iraqi alliance list – and I'm sure it had extremely worthy parties and individuals on it, and I'm not questioning their capability and their right to gain votes, but I also have no doubt that the fact that Sistani

was said to have blessed this particular list rather than any other, and the fact that his picture was on that list induced a lot of people to vote for that list.

So there are ways of influencing public opinion and decision-making without necessarily being in the executive branch. And so that is what we have to look at, the forces that are not only in the forefront but also in the background.

And, Jonathan, finally the question of the late government. Let's put a good spin on this. This is going to be a coalition government. We want to get the maximum inclusion; we do not want to exclude anyone. At the same time we want to be fair to everybody. And any coalition government is notoriously difficult to put together. And so the nicest thing one can say is that they're taking their time in order to have the perfect balances.

MS. SMITH: Laith?

MR. KUBBA: Okay, on the women issues, I think I agree with Rend; we need not simply look at numbers. I think the real thing is are we going to – is Iraq going to express its position on this purely on need and development-driven issues, because Iraq – I just cannot see Iraq recovering without active involvement, broad participation from women in the rebuilding of the country. Or is it going to be simply a matter of principle, whether it's religious groups or secular groups stating these abstract positions? I hope that the parliament will be driven by the real needs of the country and that would be the guiding principle, not simply abstract positions.

And in terms of the role of the clergy, I agree that the clergy do not want to take full responsibility of the country in Iraq. This is true. They just want to keep an eye on the country. But I think so long as genuinely people are empowered to take decisions themselves, I do not fear if it is within the country's – within the Iraqi's zone of comfort to move closer to religion. I don't think this is going to be the real issue. I think there is enough diversity within Iraq, there is enough urbanization, there is enough modernity to serve as checks and balances against how religion is interpreted in public life. So I'm not worried about the power of the clergy; I'm more worried about having an institution which is parliament that is effective and real. I think if we have that in place, we're safe. I'm not worried about too much power of the clergy.

And, Jonathan, on the question you you've raised, I think – I mean, again, it's my point of view. I'm not an official; I can speak my mind. I think Iraqi political leaders are playing really cat and mouse delaying crunch issues. They're playing on time, they're playing on tactics. There are tough issues ahead. They played on them when they drafted the TAL. And nobody knew the TAL; there was no public debate. At the last minute an article was asserted and it created a huge hoo-ha. So I will not be surprised if this is going to be pushed again, but the TAL states that this has to be approved by the country, and if three provinces object they will exercise their right. I will not be surprised if that takes place.

The fact that elites can agree it does not necessarily mean the country will swallow it. So I think it's a long way ahead.

MS. SMITH: Thank you.

MR. SHEMDIN: I just want to make a comment based on – well, it's an addition – a complimentary comment. As far as the power of the clerics are concerned, it is important that it is admitted in the constitution that they honor what they are saying, is they will not interfere in the politics and being the guardians of the – because if the constitution respects the rights of the people and they have the right to re-elect a new government, then there will not need be – in Turkey, for many, many years, there is the army, who is not accountable to the civil government, and when they think that the government is not going in the right direction, not only do they step in and get rid of the government and put the ministers in jail, but they also come up with their own constitution. I don't think we should allow in our new constitution that's going to be drafted that such a situation should happen.

MS. SMITH: Well, there may be an upside to not having yet fully fledged armed forces.

Let me ask all of you to join me in thanking our panelists. As someone who reads all of the coverage of Iraq every day, I have certainly learned a lot, and I think you've helped all of us understand the issues you face and we certainly wish you all the best. But thank you very, very much for your contributions today.

(Applause.)

(END)