

# Constitutional Construction and Imperfect Bargaining in Iraq: A Long and Winding Road

The process of constitutional construction in Iraq has been a complex and challenging one, marked by imperfect bargaining and the interplay of external and internal factors. This article examines the various stages of this process, from the drafting of the constitution to its implementation, and highlights the obstacles and compromises that have shaped Iraq's constitutional framework. It also discusses the ongoing challenges and prospects for constitutional reform in Iraq, considering the country's evolving political landscape and the need for greater inclusivity and consensus-building.



## Negotiating in Civil Conflict: Constitutional Construction and Imperfect Bargaining in Iraq

by Haider Ala Hamoudi

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## The Drafting Process

The drafting of Iraq's constitution was a contentious and protracted process that spanned several years. The first draft was produced in 2003 by the US-appointed Iraqi Governing Council, but it was rejected by many Iraqis as being too heavily influenced by American interests. A revised draft was then produced by the Iraqi Constitutional Review Committee in 2005, but it too was met with criticism from various groups. The final draft of the constitution was eventually approved by the Iraqi parliament in 2005 and ratified by referendum in 2005.

The drafting process was characterized by imperfect bargaining, as different groups with conflicting interests sought to influence the outcome. The US, for example, pushed for a constitution that would protect American interests in Iraq, while Iraqi political and religious leaders sought to ensure that the constitution reflected their own values and priorities. The resulting constitution was a compromise that attempted to balance these competing interests, but it also contained a number of ambiguities and contradictions that have led to ongoing disputes over its interpretation and implementation.

## **Implementation Challenges**

The implementation of Iraq's constitution has also been a challenging process, due to a number of factors. One major challenge has been the lack of consensus on the interpretation of the constitution. Different political and religious groups have interpreted the constitution in different ways, leading to disputes over the distribution of power and resources. Another challenge has been the lack of capacity to implement the constitution effectively. The Iraqi government has been weak and fragmented, and it has often been unable to enforce the constitution's provisions. As a result,

the constitution has been implemented unevenly, with some provisions being implemented more effectively than others.

## **External Influences**

The process of constitutional construction in Iraq has been significantly influenced by external factors. The US, in particular, has played a major role in shaping the process. The US occupation of Iraq from 2003 to 2011 gave the US considerable leverage over the drafting and implementation of the constitution. The US pushed for a constitution that would protect American interests in Iraq, and it also provided financial and technical assistance to the Iraqi government to help implement the constitution.

Other external actors have also played a role in the process of constitutional construction in Iraq. The United Nations, for example, provided technical assistance to the Iraqi government during the drafting process, and it has also played a role in monitoring the implementation of the constitution. Neighboring countries, such as Iran and Saudi Arabia, have also sought to influence the process, reflecting their own interests in Iraq's stability and development.

## **Internal Dynamics**

The process of constitutional construction in Iraq has also been shaped by internal dynamics. The country's diverse population, with its different ethnic, religious, and sectarian groups, has made it difficult to achieve consensus on a constitution that is acceptable to all. The country's history of authoritarian rule has also made it difficult to establish a constitutional culture that respects the rule of law and human rights.

The political landscape in Iraq has been fragmented and unstable since the fall of Saddam Hussein in 2003. This has made it difficult for the government to implement the constitution effectively. Political parties and leaders have often put their own interests ahead of the national interest, and they have been unwilling to compromise on key issues. This has led to political gridlock and a lack of progress on constitutional reform.

### **Ongoing Challenges and Prospects for Reform**

The process of constitutional construction in Iraq is ongoing. The constitution has been implemented unevenly, and there is a need for further reform to address the challenges that have been identified. These challenges include the lack of consensus on the interpretation of the constitution, the lack of capacity to implement the constitution effectively, and the influence of external actors. Addressing these challenges will require a sustained effort from the Iraqi government, with the support of the international community. It will also require a willingness from all parties to compromise and to work together for the common good.

The prospects for constitutional reform in Iraq are uncertain. The country's political landscape remains fragmented and unstable, and there is a lack of consensus on key issues. However, there is also a growing recognition of the need for reform. The Iraqi people have suffered from years of conflict and instability, and they are increasingly demanding a more stable and democratic future. The international community also has a stake in Iraq's stability, and it is providing support for efforts to reform the constitution.

Whether or not Iraq is able to successfully reform its constitution will depend on a number of factors, including the willingness of the Iraqi government to lead the process, the level of support from the international

community, and the ability of the Iraqi people to overcome their differences and work together for a common future.

The process of constitutional construction in Iraq has been a long and winding road. It has been marked by imperfect bargaining, the interplay of external and internal factors, and ongoing challenges. However, there is also a growing recognition of the need for reform, and there is hope that the Iraqi people will be able to overcome their differences and work together to build a more stable and democratic future.



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