

Testimony of

The Honorable John Cornyn

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U.S. Senate Subcommittee on the Constitution, Civil Rights and Property Rights
U.S. Senator John Cornyn (R-TX), Chairman

Constitutionalism, Human Rights, and the Rule of Law in Iraq

A joint hearing with the Senate Committee on Foreign Relations
Subcommittee on Near Eastern and South Asian Affairs
U.S. Senator Lincoln Chafee (R-RI), Chairman

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Today, the lights are back on in Baghdad. The sound of gunfire is still there, but not so loud as before. The climate in Iraq can best be described as cautious unease. The Iraqi people today are free from Saddam - but they are not yet free from fear.

We have seen progress when it comes to ensuring the basic security of the Iraqi people - the recruitment of a new police force, elimination of Baathist party remnants, and the capture of armed gangs of militants are all positive signs. But there is still much work to be done. We must end the looting and the street violence, and restore the property rights of the Iraqi people. The foundation of a peaceful, just, and prosperous society in Iraq cannot be constructed when lawlessness reigns.

The current unstable situation is, at least in part, an unintended by-product of the speed and efficiency of our military forces. Never before has the world witnessed such a marvel of technology, training, dedication, and leadership in war. And I am enormously proud of our heroic men and women in uniform, who bravely put themselves at risk for the cause of freedom.

Yet currently, the only thing preventing the mass outbreak of conflict between Iraq's rival ethnic and religious groups is the authority of coalition military forces. This stopgap is clearly no substitute for long-term solutions. The Iraqi people must re-learn how to govern and police themselves.

We can harbor no illusions about the reconstruction of Iraq: the current occupation will not, and should not, be brief. While the Administration understandably wants to return Iraq to the Iraqi people as soon as possible, this well-intentioned desire could backfire.

Iraq looks like the Old West right now, and we need lawmen to restore the peace and protect the populace. The Texas Rangers have a saying: "One riot, one Ranger." But Iraq will need more than one Texas Ranger - it will need a substantial, professional, civilian police force, untainted by the shock troop tactics of Saddam Hussein's enforcers.

After dealing with the immediate problems of security, we must help the Iraqi people forge a nation governed by laws, not men. I strongly believe that establishment of the rule of law is the most critical factor in determining long term prosperity, stability, and freedom in the new Iraqi state.

We do not yet know who will lead Iraq. But ultimately, the leader's identity is far less important than establishing the rule of law - expressed through a constitution and an independent judiciary. While leaders come and go, it is the law that guards our freedom.

It is not up to us to determine the precise form of Iraq's new government. That choice ultimately belongs to the Iraqi people. Nevertheless, we must ensure that one brutal dictator is not replaced by another, or that Iraq becomes a theocracy where freedom of religion and equal rights for women are outlawed.

The new Iraqi state must encompass and acknowledge all of its citizens. United Nations resolution 1483, unanimously adopted by the Security Council on May 22nd, calls for the establishment of "a representative government based on the rule of law that affords equal rights and justice to all Iraqi citizens, without regard to ethnicity, religion, or gender." That sounds to me like a good start.

The late Allan Bloom once pointed out that what sets America apart is the unambiguous nature of our own constitutional tradition: "It's meaning," he said, "is articulated in simple, rational speech, that is immediately comprehensible and powerfully persuasive to all normal human beings. America tells one story: the unbroken, ineluctable progress of freedom and equality."

Regardless of differences of opinion concerning our tactics and actions, we can all agree that there are irreducible minimums that must be in place in this process. The Iraqi charter must build on the nation's own legal traditions, stretching all the way back to the Code of Hammurabi. It must be founded on the proper role of government: to protect and preserve freedom. The constitution of Iraq must, like our own, tell one story.

Today, we have the opportunity to speak to several witnesses who will provide us counsel on all of these issues. We will hear from a panel of experts on Iraq generally about the issues faced today, and we will hear from a panel of constitutional and legal experts about the constitutional issues we must face for the future. There are historical precedents that are certainly worth studying at times like these, and I look forward to hearing from all of our witnesses.

We should not forget that, while the aspirations of the Iraqi people may seem far off today, John Adams once noted: "People and nations are forged in the fires of adversity."