

Testimony of

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by

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As I understand my task, it is not to lay out a blueprint for rebuilding constitutional government in Iraq, but rather to indicate what lessons Americans might draw from the Allied effort to restart constitutionalism in Germany after World War II. This committee should bear in mind, however, that Occupied Germany of 1945 is not the occupied Iraq of 2003. The two situations are entirely different, although the German experience may provide guidelines for political reconstruction in Iraq.

Allow me to list the main differences in the two situations: First, we invaded Iraq to remove its rulers and thereby to liberate its people; we invaded Germany to smash an enemy nation and to overpower its people. Second, Germany in 1945 was disgraced, dispirited, and dismembered; Iraq in 2003 survives with most of its infra-structure intact, its territory unified, and its people aroused. Third, the Germans mounted no armed opposition to the Occupation; Hussein loyalists, by contrast, are fighting back and killing Americans. Fourth, Iraq is pockmarked by tribalism, ethnic division, and religious radicalism, blotches on the polity conspicuous for their absence in occupied Germany. Finally, Germany's unconditional surrender validated the Allied Occupation, even in the eyes of most Germans, a legal reality far from clear in the case of Iraq's occupation.

Nevertheless, the German experience may be relevant to Iraq in these respects: First,

reestablishing constitutional government can only begin when the occupying power is fully in control and only when law and order have been fully restored. Second, rebuilding democracy must be the first responsibility of the Iraqis. Third, a spirit of trust and cooperation must define the relationship between the occupiers and the occupied. Finally, the educated classes and a critical mass of democratically-inclined citizens must be willing and able to cooperate with the Occupation.

Perhaps the most important lesson of all is that the restoration of democratic constitutionalism must be a bottom-up rather than a top-down affair, and it must reflect indigenous values and traditions. (The top-down model worked in Japan because of that country's compliant political culture and the desire of its people to imitate American "know-how.") Top-down would not have worked in Germany, and is unlikely to work in Iraq.

Consider how the process worked in Germany. Already in late 1945, the Military Governors authorized Germans to rebuild their local and state governments. They selected the top German officials charged with this task, but thereafter these officials acted on their own save for certain functions related to internal security and trade relations beyond their respective zones of occupation. By mid-1946, elected parliaments and prime ministers were functioning under written constitutions, at least in the four states of the American Zone. Local representatives of political parties licensed by American military authorities drafted these constitutions. Although requiring the approval of the Allies, the constitutions were home-made products rooted in Germany's democratic tradition, and they were largely duplicates of the state constitutions in force during the Weimar Republic. Successful parliamentary democracies emerged from this bottom-up process of reconstruction.

With this foundation in place at both local and regional levels, the Allies turned their attention to the national level. (The reestablishment of the national government would probably have taken much longer had it not been for the American determination to incorporate West Germany into the Anti-Soviet Atlantic Alliance.) In mid-1948 - three years after Germany's defeat - the Military Governors commissioned the prime ministers of the eleven reorganized states to convene a national assembly to write a new constitution for Germany. They specified that the new constitution must establish a federal form of government, protect the rights of the respective states, and provide for the protection of individual rights and freedoms. Within the framework of these broad principles, Germans were free, subject to Allied approval, to draft a constitution of their own making.

The prime ministers moved at once. They appointed a committee of experts to prepare a draft constitution for the assembly's consideration. Twenty-five persons - all Germans - accomplished this task in 14 days. No Americans were present during this period. The initiative then shifted to the state legislatures. They elected the assembly's 65 delegates. There was no Allied interference in these elections. All 65 delegates were members of political parties represented in the state legislatures. Fifty-four of the delegates - again all Germans - were members of these legislatures. Over the next ten months, the assembly - known as the Parliamentary Council - produced the Basic Law, which in time would become one of the world great constitutions. The Military Governors monitored the making of the Basic Law, but they did not participate in its proceedings.

Conflicts arose between the convention and the Military Governors, particularly over the taxing power of the national government. But this and other conflicts were resolved by compromise and generally to the satisfaction of the Germans. In fact, the Military Governors made a number of concessions. For example, they originally insisted on the popular ratification of the Constitution, but gave way to the German view that the state legislatures should perform this function. They - the Military Governors - also agreed to more centralization of federal authority than they were originally prepared to accept.

Germany's Basic Law became one of the great success stories of the Allied Occupation. The basis of the success seems clear: The German people were allowed to create institutions of their own choosing and founded on their own political, social, and even religious traditions. Yet the Basic Law marked out a new beginning by its codification and promotion of a constitutional morality that rejected the political pathologies of the past. The Occupation experience shows that in the right set of circumstances, which may or may not exist in Iraq, military authorities can transform a once-outlaw nation into a promising constitutional democracy.