In June 2005, an Iraqi newspaper published what was then the latest draft of the constitution being negotiated by Iraqi politicians. Its contents revealed that the Iraqis wanted to build a Scandinavian-style welfare system in the Arabian desert, with Iraq’s vast oil wealth to be spent upholding every Iraqi’s right to education, health care, housing, and other social services. “Social justice is the basis of building society,” the draft declared.

In other words, the Iraqis wanted nothing of the kind of economic and political system that US officials have been attempting to create in Iraq since the end of the war. As direct occupiers, the US enacted the so-called Bremer Laws. These give foreign investors equal rights to Iraqis in the domestic market; permit the full repatriation of profits; envisage the sale of state-owned companies; and privatize all kinds of social services; all of which could have been rendered unconstitutional under the June draft.

Enter Zalmay Khalilzad, the newly appointed US ambassador who was accused of serving as the “campaign manager” of pro-US candidate Hamid Karzai in Afghanistan’s presidential elections. Khalilzad was a permanent fixture behind the closed doors where the real constitutional debates took place, and was described by the Financial Times as playing a “big role in the negotiations.” He was backed up by US embassy officials who, according to the Washington Post, were working from a Kurdish party headquarters to “help type up the draft and translate changes from English to Arabic for Iraqi lawmakers.” At one point, Khalilzad’s team of US diplomats even offered their own proposed text of the constitution to the Iraqis.

One Kurdish member of the constitutional committee who was involved in the caucuses complained: “The Americans say they don’t intervene, but they have intervened deep” [sic]. Nor were they acting as neutral mediators. US and UK officials, he said, were “being governed by their domestic agenda.”

While Khalilzad and his team of US and British diplomats were all over the scene, some members of Iraq’s constitutional committee were reduced to bystanders. One Shiite member grumbled, “We haven’t played much of a role in drafting the constitution. We feel that we have been neglected.” A Sunni negotiator concluded: “This constitution was cooked up in an American kitchen not an Iraqi one.”

By the time the next draft constitution was leaked in late July, the progressive provisions in the June draft had disappeared. Gone was the article proclaiming a commitment to social justice as the basis of the economy. In its place was a provision binding the state to “reforming the Iraqi economy according to modern economic bases, in a way that ensures complete investment of its resources, diversifying its sources and encouraging and developing the private sector.” Instead of revoking the so-called Bremer Laws, the new draft constitution would make Iraqis constitutionally bound to enforce them.

Also gone was the provision obliging the state to safeguard Iraq’s oil. Instead, Article 110 of the draft constitution lays the ground for selling off oil assets by obliging the state to “draw up the necessary strategic policies to develop oil and gas wealth to bring the greatest benefit for the Iraqi people, relying on the most modern techniques of market principles and encouraging investment.” By “modern techniques of market principles” the draft is referring to current plans supported by the interim government’s top leadership to privatize the Iraqi National Oil Company and to open up Iraq’s oil reserves to the big oil corporations. The constitution paves the way for the eventual acquisition of Iraqi assets by foreigners or multinational corporations. While the June draft
stated that “Iraqis have the complete and unconditional right of ownership in all areas without limitation,” the final draft dropped the words “unconditional” and “without limitation” and added instead the qualification “except what is exempted by law.” Given that Bremer’s Order 39 already allows foreign ownership of Iraqi assets and that this order will be perpetuated as a law, the constitution in effect removes the restriction giving Iraqis exclusive ownership over assets in Iraq.

The June draft promised extensive welfare commitments to Iraqis, including free education and free health care. A subsequent draft said that welfare services will be provided but only if the government can afford them. The final draft gave vague assurances that the services will be delivered, but added new wording on the private sector’s role in delivering them.

Iraq’s constitution is critical because, as the basic law of the land, it establishes the fundamental legal foundation on which Iraq’s neoliberal edifice is to be built. The media has tended to focus on the sectarian provisions of the constitution and ignored the insertion of economic provisions. But what most likely happened was that the US tolerated the adoption of religious provisions and agreed to the establishment of a federal system, as demanded by the Shia and Kurdish parties, in exchange for the introduction of neoliberal economic provisions in the constitution.

In the quid-pro-quo, investors’ rights trumped women’s rights and social justice. The June draft provided a hint as to what kind of constitution the Iraqis might have chosen if they had been left to their own devices.

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