

The Chaos of the Iraqi Constitutional System and Failure of Government

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ABSTRACT *This study attempts to present and analyze the chaotic nature of the Iraqi constitutional system since 2005 and its impact on the political-economic and social crises. The study also seeks to explore sectarian problems and political quotas that emerged due to the existence of a deep gap between the culture of reactionary parties that do not believe in the democratic modern state, the philosophy of liberal democracy, institutionalism, the separation of powers, or respect for human rights.*

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Introduction

The political life in Iraq was characterized by sectarian inclusiveness, which ruled the political system after 2003. Instead of realizing the promises of building a democratic system that guarantees human rights, freedom of expression, and the state of the citizen, the monopoly of power by the advocacy parties emerged as a model for political tyranny and the monopoly of economic resources. Thus, the political system ignored the concept of the neutrality of state institutions in democratic systems, that is, to be equal among all classes, religions, sects, races, nationalities, and cultures, with no interference in the affairs of political parties, ensuring justice in political, and economic participation, and granting the right to choose political and intellectual trends within the democratic civil state.

The main objective of any Constitution is to set the rules for the political, social, and economic relations between the state and its citizens, to ensure justice, rights and freedoms for citizens, and to guarantee national unity and state sovereignty. Hence, the Constitution must express society's needs, demands, and goals in building the state of the political system. It should accordingly be drafted, discussed, and approved by the people in a referendum. International agreements, including The Hague and Geneva conventions, indicate the need to prevent a foreign power from imposing a Constitution on an occupied country. Despite all these limitations, after occupying Iraq in 2003,

the U.S. established the Iraqi Governing Council in July 2003, legislated the Transitional State Administration law, approved it as the country's new transitional constitution, and imposed and implemented it without the consent of the Iraqi people.¹

The doctrinal ideological approach dominated the political discourse of the Iraqi parties after 2003, and this domination was reflected in the application of the constitution. In isolation from any scientific view that takes into account the constitutional rules of the modern state, this made the 2005 Constitution lose its national identity, which represented the culture of a society characterized by religious and national diversity, and the advocacy party discourse appeared governed by the concept: "the numerical Shiite majority." This contradicts Article (76): "The President of the Republic assigns the candidate of the most numerous parliamentary bloc to form the Council of Ministers within fifteen days from the date of the election of the President of the Republic."

The advocacy parties have failed to implement the Constitution to achieve justice in the distribution of wealth and insurance of social and democratic balance between Iraq's various religions, sects, nationalities, and races. The policies of religious and sectarian discrimination have led to the disintegration of society instead of deepening the spirit of citizenship to achieve national unity.

Based on the above-mentioned, the study of factors and causes of the

Iraqi constitutional system is of exceptional importance for the following: the understanding of the nature of the great failure in the political and economic model in Iraq, the inability of the constitutional transition to ensure democratic development and political participation, and the transition from state capitalism to an open market economy. These were due to the lack of advocacy parties that monopolized power to scientific, economic, and political policies and programs. The principle of equitable distribution of wealth has also been absent. The phenomenon of social, religious, sectarian, and ethnic discrimination has spread. The country has moved away from the application of standards of efficiency and fair competition in the distribution of power in filling public and private jobs. This has deprived many groups in Iraqi society of participating in the political and economic process.

Civil or Religious State?

The 2005 Constitution included a set of statutes contradicting the principles of the civil and democratic state, which led to the lack of consensus and division between the parties to the political process instead of helping to solve the many political, economic, and social problems in Iraq, and many clauses in laws contributed to creating and raising serious problems. These main issues and problems can be identified as follows: Article (2) stipulates the following: "Islam is the official religion of the state, and it is a basic source of legislation,"

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and further states: "It is not permissible to enact a law that contradicts the constants of the rulings of Islam." Paradoxically, paragraph (b) states the impermissibility of "enacting a law that is in contradiction with the principles of democracy" or "the basic rights and freedoms contained in this Constitution," according to what was stated in paragraph (c). This led to the loss of all the positive meanings mentioned in the second chapter of the Constitution dealing with rights and freedoms due to the contradiction of public policies and the continued dominance and monopoly of parties, institutions, and religious personalities of the three authorities.

The 2005 Constitution deepened the division of society into religious sects, as Article (41) states: "Iraqis are free to abide by their status, according to their religion, sects, beliefs or choices, and it may be regulated by law." This classifies Iraqis according to religious sects, their beliefs, and their personal lives, a problem that the Iraqi laws had already overcome by establishing a unified personal status law in 1959, which guaranteed equality and justice for citizens regardless of their re-

ligious and sectarian affiliations. Article (43) also affirmed the freedom of doctrinal rites, noting: “The followers of every religion or sect are free to practice religious rites, including the Husseini rites.” This raised the reservations and objections of civil society organizations, especially human rights organizations, and women’s associations. Undoubtedly, the innumerable ambiguities, the divisions behind the constitution-drafting process, and the disagreements over the interpretation of constitutional texts; have created more political problems and disrupted the capabilities of the political system. The Constitution has also been a major factor in perpetuating the chaos that has prevailed in most cities and regions since the occupation of Iraq in 2003, where Iraq remains, to this day, despite electoral promises, one of the most dangerous and corrupt countries in the world.² The fragile security situation and economic and municipal services such as electricity, sanitation, clean water, health, and education are almost unavailable.

The Failure of the Political System to Establish a State of Institutions

The current struggle for power in Iraq constitutes a continuation of the crisis of the political system, its inability to ensure justice in the distribution of wealth and resources, its failure to guarantee human rights and democracy, its inability to achieve the peaceful transfer of power, and its reliance on a sectarian exclusionary ideology represented in the domination of Shi-

ite parties over the three authorities. This deepened the crises between the culture of theocratic and civil parties to build a state of constitutional institutions and reflected a serious structural imbalance that established political chaos, the militarization of society, and the continuation of the phenomenon of wars and violence. The development of events and the continuation of the political crisis in today’s Iraq raise an ethical issue in the countries of the Middle East that are experiencing sharp contradictions between the model of a constitutional democratic state and the attempt of the Islamic Republic of Iran to spread the totalitarian theocratic model.

Political sectarianism, marginalization, and exclusion have taken root, and the conflict in the political system has centered around the positions of responsibility in the country, not for reform but for domination, acquisition, and deepening sectarian and regional rifts. Iraq has, in fact, entered the tunnel of conflict over centers of influence and power instead of political partnership.

The Deep State and Human Rights Abuses

Opposition to the political system in Iraq, which is characterized by the existence of a deep transnational state that undermines democracy and the separation of powers, and encourages political and financial corruption, is deepening in mainstream public opinion today. In addition to the spread of sectarian intolerance, sec-

tarian and political quotas, serious violations of human rights, and the spread of secret prisons and torture since 2003. As confirmed by the Human Rights Committee in the House of Representatives and the organization Human Rights Watch, Iraqi detention centers have held more than 300,000 detainees, and 4,500 Iraqi women have been arrested and raped. Prisons and secret detention centers affiliated with militias are also widespread, where detainees are subjected to the worst forms of humiliation, torture, and arbitrary executions that contradict the principles of human rights and democracy in the 2005 Constitution.³

Although Iraq acceded to the International Convention for the Protection of All Persons from Enforced Disappearance in 2010, the Iraqi authorities did not abide by Article (4) of the Convention, which stipulates: “Each state party shall take the necessary measures so that enforced disappearance constitutes a crime in its law.” Article (17) of the Convention stipulates: “No one may be imprisoned in an unknown location,” and that all detainees must be imprisoned in officially recognized places to facilitate their location to ensure their protection by force of law. However, the Iraqi government still refuses to abide by this outright. Several parties dispute this authority with the Ministry of Justice, although it is this Ministry that is legally considered to have the exclusive responsibility for detention centers and prisons, including the Ministries of Interior and Defense, and an unlimited number of

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military and security agencies up to the Popular Mobilization Forces. The Iraqi government refused to close the prisons and unofficial detention centers belonging to these parties.

Returning to the documented enforced disappearances, including the al-Razzaza incident, the report of the United Nations Assistance Mission for Iraq, entitled: “Report on the Protection of Civilians in the Armed Conflict in Iraq from November 1, 2015, to September 30, 2016,” revealed the gross human rights violations and unlawful killings and kidnappings of many individuals fleeing conflict areas in Iraq. Al-Anbar at al-Razzaza checkpoint, controlled by militias, stated that the number of kidnapped people was approximately 1,200. Concurrently, the Office of the United Nations High Commissioner for Human Rights in the mission was able to “confirm the identities of approximately 460 of those who were kidnapped in al-Razzaza.”⁴

Another report by the United Nations Mission entitled the “Human Rights Situation in Iraq December-June 2017” stated that: “An armed group from Kata’ib Hezbollah separated 1,500 teenage men and boys from

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women and children.” Later a list was prepared that included the names of 643 missing men and boys, as well as 49 others, believed to have either been arbitrarily executed or tortured to death in custody. In the two incidents, the Iraqi government acknowledged the enforced disappearances and announced the formation of investigative committees, and the United Nations confirmed that it had received a response from the Iraqi Ministry of Foreign Affairs acknowledging that “707 people from Saqlawiya are still missing.”⁵ However, until now, the fate of those who forcibly disappeared is still unknown, the results of any of these investigations have not been announced, and no one has been prosecuted or held accountable.

The institutions of the authority have also failed to confront the displacement crisis that has affected millions of Iraqis. According to the statement of the representative of the United Nations Secretary-General Jan Kubis in Iraq: “The displacement

crisis reached its climax in April 2016 when 3.4 million people were forced to leave their homes.”⁶ Two years later, more than one million people are displaced and need humanitarian assistance. However, funding for emergency support for the most vulnerable remains very low. Because of the wars, the number of orphan children has risen to 5.6 million, and widows has reached 2 million, with 8.6 million people in need of humanitarian assistance, according to UN estimates. These indicated that 3.5 million citizens live in temporary housing unsuitable for humans, in addition to the spread of epidemics that seriously threaten public health.⁷

Financial and Political Corruption

Political corruption is defined as the abuse of public power to achieve illegitimate benefits, personal interests, and hidden gains. Corruption exists in non-democratic political systems, regardless of their different identities, titles, names, and orientations. Political corruption is linked to financial corruption that establishes cross-border organized crime, drug trafficking, money laundering, currency counterfeiting, cybercrime, and illegal commissions on deals, which are considered a crime against honor and betrayal of the homeland according to Iraqi laws.⁸ As a result of the monopoly of the power of parties and militias and their control over the mechanisms of the state, the extent of financial corruption in Iraq has expanded to include the entire economic structure. Coupled with

the lack of justice in employment, this has led to increased unemployment to more than 31 percent, extreme poverty has risen to 35 percent, and 7 million people are considered illiterate, with drug use recorded among 6 percent of Iraq's youth.

The deterioration of stability and economic security is linked to the phenomenon of financial corruption, and a report issued by the International Center for Development Studies in London revealed: "In the period 2006-2014, Iraq achieved financial surpluses estimated at 700 billion dollars, which went to the corrupt political class when it should have contributed to reconstructing Iraq and turning it into a modern state," according to a report published by Sinan al-Shabibi, governor of the Central Bank of Iraq. Representative Adel Nouri, head of the Parliament's Integrity Committee, published a report in 2016, stating: "The Iraqi government spent \$600 billion during Nuri al-Maliki's tenure as prime minister, without receipts documenting the expenditure." The government of Nuri al-Maliki also squandered an estimated \$206 billion, on fake contracts or lagging projects, for 6 thousand projects to construct roads, bridges, hospitals, schools, and real estate. The Transparency International report for 2019 indicated that Iraq comes after Syria, among the six most corrupt countries globally in terms of looting national wealth.

The report of the Iraqi Integrity Commission, which is the body in charge of following up on corruption cases in Iraq, said that it worked in the first

half of 2018 alone on nearly 8,500 corruption cases in state institutions and that it was able, during the same period, to stop wasting the equivalent of about \$400 million. Thousands of officials, including ministers and senior civil servants, were referred to the judiciary.⁹

The Country's National Identity

The Iraqi political system has faced many challenges, represented in the problem of political legitimacy, which still threatens the balance and stability of the system. There is an absence of identity for the national project that frames the political behavior of all social, political, and economic forces, whether at the level of the relations of the institutions of the political system or in the relationship of institutions with civil society organizations. The Republic of Iraq needs to ensure a degree of continuity and balance for the state of institutions in the face of the challenges of occupation, or it will lead to repercussions and eventual disintegration.

Therefore, the goal of preserving the state and the structure of the political system within the framework of the historical process of the development of Iraqi society remains a goal to crystallize a comprehensive Iraqi national identity for the various components of the Iraqi people within the framework of a political system that is consistent with the needs of all classes, religions, and nationalities and provides opportunities for sustainable development. That is establishing a



Mohammed Shia al-Sudani makes a statement after Cabinet wins a confidence vote in the Iraqi parliament, October 27, 2022. Iraqi Parliament / Handout / AA

constitutional, political, parliamentary, democratic, and pluralistic system that provides a comprehensive political framework for coexistence, cooperation, and consensus for all organizations and parties under consensual political legitimacy.

However, the political and security scene, since the occupation of Iraq in 2003, has been shrouded in chaos, uncertainty, and ambiguity. Armed violence is a tool of social and religious coercion leading to the widening security gap that is considered the start of dismantling the structure and function of society and the state. The spread of a culture of intolerance and sectarian extremism on the ruins of national unity is further fueled by the defense of the policies of sectarian and unconstitutional quotas. Investment and development plans have been non-existent, the role of

industry and agriculture in the Iraqi economy has ceased, and more than 50,000 factories that have been disabled since 2003 have not been rehabilitated. The neglect of agricultural and water management means that Iraq is importing 92 percent of its food needs from Iran, which constitutes a serious violation of its security. The economic opportunities for reconstruction have faded through fake deals and the spread of political and financial corruption under the auspices of armed parties and mafias that have produced an oligarchic class for political, economic, and military tyranny. Therefore a comprehensive review of the constitutional philosophy and the function of the political structure on which the political process is based is urgently required.

To confront the comprehensive crisis of the political system, the Iraqi

National Coalition (INC) called for reforming the tracks of the political process in Iraq by removing it from political, sectarian quotas, marginalization, and exclusion. The goal of the political process must be clear in establishing a state of true civil citizenship that is based on justice, equality, and the rule of law. Furthermore, there must be the building of professional institutions capable of providing security requirements and services, stopping security repercussions, and mobilizing energies to achieve political and military victory over terrorism and the elimination of all forms of extremism so that Iraq will have the basis for stability, at the national, regional, and global levels. The INC pointed out that Iraq is going through very dangerous situations characterized by blood, violence, and chaos. There is total dependence on foreigners in many organizations, declining government performance, as well as quota policies, sectarian political climates, marginalization, and exclusion. This lack of proper government has led to the spread of terrorism and its control over many regions of Iraq, with many gangs committing kidnappings and abuse. There is an absence of specialized institutions that can lead to the building of the emerging state, to counteract civil insecurity, and ensure peace. It was noted that all the huge budgets over the past periods were not used positively to develop infrastructure and improve services resulting in the collapse of economic development and the weakness of infrastructure. This has brought the political process to a dead end, and corruption has

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become the rule rather than the exception. Monetary inflation and the budget deficit have increased to reach unprecedented levels.¹⁰

Calls have expanded, even from within parties in the political process, to express positions that support the right of the masses to demand change through peaceful demonstrations and sit-ins that started in February 2011 and continue intermittently. Demands for a civil state, a state of citizenship based on justice, equality, and the rule of law were also raised. Emphasizing the need to achieve national reconciliation in its security and political dimensions, open a new page in the history of Iraq and get out of the dark tunnel of the harmful quota system. Emphasis is given to not underestimating the people's will and neglecting their demands. The government's negative and unwise stance towards these legitimate demands had the greatest impact on the painful repercussions the country has since experienced. According to a statement by Barham Salih, former President of the Republic, the government must work to get rid of the unconstitutional sectarian quota system, and de-politicize religion and sects to achieve true national recon-

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ciliation, as well as punish the corrupt and return the looted Iraqi funds estimated at more than a trillion dollars. This will facilitate the achievement of economic, political, and social reform, leading to the building of a civil state, a state of citizenship, the rule of law, specialized constitutional institutions, and the separation of powers.¹¹

This calls for changing the general reality to include the country's infrastructure, security, and economic situation and combating discrimination and violence against women. To reform this reality, it is necessary to reform value systems, enable societal modernization, and build a civil state based on the foundations of justice, freedom, equality, institutionalization, and respect for the Constitution and the law. The national dialogue and true reconciliation should occur through a set of immediate measures, represented in issuing a general amnesty law, solving the de-Baathification dilemma, accountability and justice, redress for the oppressed and the deprived, and attention to the conditions of the displaced. In this context,

the Iraqi National Accord Movement has called since March 2, 2016, to implement a package of long-awaited legislation: to release innocent prisoners, rebuild cities, provide job opportunities, get out of political sectarianism and unjust quotas, build a state of true citizenship and the rule of law, confine arms to the Iraqi state, and fight corruption.

We conclude that the overall crisis in Iraq is of a constitutional and structural nature and a political structure related to the dysfunction of the legislative, executive, and judicial authorities. The authorities have not adopted a realistic program or a strategy for national security and comprehensive development that are applicable. Whether it calls for reform or confronting and addressing financial, political, and administrative corruption, or putting an end to security deterioration and the failure of the economic system, these inadequacies have become a major threat to the future of stability and sustainable development in Iraq. Therefore, the basic issues and fundamental challenges in Iraq must be addressed, and work must be done to undermine the incubating environment for sectarianism and terrorism, ending the policy of exclusion and marginalization. Through making joint decisions with external powers, the Shiite advocacy parties bear the greatest responsibility in pushing the country toward the brink of the abyss.

The leader of the Iraqi Communist Party, Mufid al-Jazaery, called for the necessity of achieving national

reconciliation, getting rid of quotas, and declaring war on corruption for the country to recover. While noting that discrimination and inequality in rights and benefits continue in full swing, he stressed that there is still an opportunity to save the country and end the crises. Stating that “what led us to this dangerous reality and to the political, economic and moral crises that we are suffering from today is the sectarian quota approach and the lack of seriousness in achieving true national reconciliation or fighting rampant corruption,” al-Jazeera summarized:

We have an opportunity to save the country and put an end to the worsening crises by turning to build the country based on citizenship, establishing a civil state, and respecting people’s rights as stipulated in the constitution. Fulfilling the entitlement to achieve national reconciliation and liberation from sectarian and national quotas and declaring a general and comprehensive war on corruption and spoilers will restore Iraq’s health again.

In the same context, Representative Mahdi al-Hafiz declared that the parliament is a functionally failing sectarian structure that does nothing, and the strange thing is that all those who participated in the corrupt political process are directly responsible for all the actions and policies that perpetuated hatred, sectarian discrimination, and political exclusion. It provided the full opportunity for Iranian political, economic, and military dominance over Iraq through

the dominance of 34 armed militias linked to the Revolutionary Guards, the Quds Force, and Iranian intelligence, which now own factories for missiles and drones that bomb Baghdad, Erbil, Sulaymaniyah, and Mosul, among others. Since 2018 there has been an escalation in popular protests against poor services and rampant corruption in state facilities. The latest protests in Baghdad, which took place in Tahrir Square and near the walls of the fortified Green Zone, then invaded the Parliament building in the Green Zone in August 2022, including the Government Palace, and this led to the outbreak of armed confrontations, with many protestors being killed or wounded.

Therefore, we conclude that the expansion of the phenomenon of the absence or lack of clarity of constitutional culture in Iraqi society is linked to the weakness of faith in the constitutional, civil and democratic state. The marginalization of national identity in the Constitution and the spread of a culture of sectarian discrimination and political quotas have led to the perpetuation of the monopoly of the Shiite Dawa Party and its allies of parties, movements, and militias over the three authorities. Hegemony over the army, the security services, and the police is one of the fundamental reasons for the growing political conflicts between parties and alliances, the disintegration of the political process, and the lack of stability and security.

Therefore, the solution lies in the development of a constitution for a ra-

tional, civil state that guarantees the rights of all religions, sects, nationalities, and social classes. The democratic political system must be neutral and, above all, doctrines and ideologies to avoid the policy of exclusion, marginalization, and sectarian and political quotas that pushed the political process in Iraq towards impotence, disintegration, and administrative and financial corruption. In our contemporary history, this policy has also placed the Lebanese political system in front of dilemmas, bloody religious sectarian wars, and ideological conflicts as it faces the growing phenomenon of political instability and powerlessness, and the inability to elect a President of the Republic.

In order to confront the serious constitutional, political, economic, and social crises in Iraq, it is possible to go for the adoption of the federal system in the Constitution of 2005 on a political-geographical administrative basis, not sectarian or national. In other words, a federal system that embodies administrative decentralization and ensures the equitable distribution of wealth and power so achieving stability and security, keeping Iraq away from the specter of civil war, and guaranteeing political development through historical reconciliation. The most important of these are the abolition of exclusionary and arbitrary laws and efforts to strengthen the unity of the Iraqi people under a democratic civil state that guarantees stability, balance, and sustainable development. This requires dismantling the corrupt political process and restructuring the Iraqi

Constitution and political system within a rational constitutional state based on the separation between religion and politics.

Conclusion

The Iraqi political system faced many challenges, represented in the problem of political legitimacy that threatened and still threatens the balance and stability of the system. The absence of identity for the national project that frames the political behavior of all social, political, and economic forces, whether at the level of the relations of the institutions of the political system or in the relationship of institutions with civil society organizations, needs to be addressed. This will ensure a degree of continuity and balance for the state institutions in the face of the challenges and repercussions of occupation and disintegration. Therefore, the goal of preserving the state and the structure of the political system within the framework of the historical process of the development of Iraqi society remains a goal to crystallize a comprehensive Iraqi national identity. The varied nature of the Iraqi people requires a framework for a political system consistent with the data and needs of classes, religions, and nationalities and provides opportunities for survival and comprehensive sustainable development. That is, the establishment of a pluralistic, democratic parliamentary political system that provides a framework for all organizations and parties in Iraq to find in the Constitution a com-

prehensive platform for coexistence, cooperation, and consensus under a framework of consensual political legitimacy, away from sectarian quotas and exclusionary appropriation leading to the monopoly of totalitarian power.

Unfortunately, throughout Iraq's modern history, the political parties did not rise to the level of challenges of modernization and political development and remained captive to ideologies that led to intellectual and ideological stagnation. Since 2003 there has been an exclusionary and totalitarian pluralism characterized by contradiction and struggle for power, influence, and wealth. All of this was reflected in a clear decline in the national issue and Iraqi identity. There has been a failure to adopt the peaceful transfer of power, consistent mismanagement and financial corruption, non-observance of the standards of rational governance, and refusal to separate religion and politics. Today, the authority in Najaf manages the political affairs of Iraq, which suffers from fragmentation, disintegration, and the collapse of security and stability.

The alternative solution lies in a national consensus on the national identity of the Republic of Iraq, building a state of institutions and the separation of powers, and providing a real opportunity to implement transitional justice within the framework of a constitution that guarantees system stability, legitimacy, and political pluralism. To ensure justice, integrity, and legality, it is necessary

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to hold comprehensive political elections under the auspices and supervision of the international community. Democracy expresses its existence through the state of order and the constitution, a state of differentiation and diversity between institutions and the functions they perform in society. It also reflects the culture and civilization of the people. One of the determinants of the prosperity of democratic institutions is the intellectual and cultural context of a democratic society. Without a culture of political pluralism, respect for privacy and competition, and a separation between religion and politics, the political system in Iraq will not flourish.

The current struggle for power in Iraq is an extension of the crisis of the political system, its inability to ensure justice in the distribution of wealth and resources, its failure to guarantee human rights and democracy, and its inability to achieve the peaceful transfer of power. Furthermore, it is based on a sectarian exclusionary ideology, represented in the domination of Shiite parties over the three authorities, that monopolize

power and conform to the Iranian theory of Wilayat al-Faqih, which aims to atone and undermine man-made governments and pave the way for declaring Islamic governments subject to the global Islamic Republic. Thus, the fate of the Iraqi state is caught between the Iranian theocratic model and the rational model of building a state of civil institutions with a democratic Constitution to guarantee human rights.

The deep political and religious crisis today in Iraq reflects a serious structural and constitutional imbalance that helped establish the emergence of an authoritarian, fascist, sectarian regime. This regime has maintained power by relying on parties that practiced political terrorism during their bloody history in Lebanon, Iraq, Kuwait, Syria, and Yemen, supported by Tehran, and are committed to subordination to the system of the *velayat-e faqih* in Qom. The current events and crisis in the political life in Iraq confirm that the Middle East is going through a very dangerous stage of conflict between the hegemony of the totalitarian, theocratic Iranian Republic and the model of the civil constitutional democratic state. ■

Endnotes

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