

# Top Cleric: U.S. Can't Write Iraq Constitution

by Muriel Mirak-Weissbach

The *fatwa*, or religious edict to Iraqi Muslims, issued from Najaf by Grand Ayatollah Sayyid Ali Husaini Sistani on June 30, called for there to be no revolt against U.S. and British occupying forces, but that it is illegitimate for the U.S. occupying force to supervise the establishment of a council, for the purpose of creating an Iraqi constitution. This was an important step outlining the political parameters for an effective Iraqi resistance to avoid bloodshed and pursue the goals of democratic, sovereign government.

Ayatollah Sistani's *fatwa* simply stated: The occupying powers and the entities they create inside Iraq do not have the authority to write a constitution, because "there is no guarantee that the council would create a constitution conforming with the greater interests of the Iraqi people and expressing the national identity, whose basis is Islam and its noble social values." Any U.S. involvement is called illegal by the cleric's statement. Therefore, the current plan of U.S. proconsul Paul Bremer III to appoint such a body to make a constitution, is "fundamentally unacceptable." The *fatwa* calls instead for general elections, to select an Executive Council (Parliament) that would form a constituent assembly, to draft a constitution; that would then be submitted to the population in a referendum. It says that all believers must respect this procedure.

The *fatwa* constituted an important, intelligent move on the part of Al-Sistani, the highest authority among Shi'ites. All of Iraq's Shi'ite religious leaders, regardless of differences, have been proceeding with great caution since the U.S.-U.K. invasion, counselling only civil disobedience at times. They have all called for the occupation forces to leave. With this move, Sistani has laid down a law to which all Shi'ites are bound, regarding the course which the political process in Iraq must take.

## Bremer's Drafting Body

Translated into plain English, Sistani's *fatwa* means that none of the plans cooked up by the occupying powers for rigging an Iraqi government and constitution, will work. The *New York Times* noted in a June 30 article that the *fatwa* "may complicate considerably the plans of the American-led authority."

Bremer had planned to handpick the council or commis-

sion which would be tasked to draft a constitution. The people named to head up the commission are not what one could call “representative Iraqis.”

The head of the group is an American, Assistant Prof. Noah Feldman of New York University, who studied law at Harvard and Islamic studies at Oxford. Feldman knows Hebrew, Arabic, and Aramaic, a Semitic tongue; he has studied the Islamic philosophers, al-Farabi and Ibn Sina. He helped write a constitution for Eritrea, and worked as an assistant to Supreme Court Justice David Souter. Very little known until Sept. 11, 2001, he suddenly became known an expert in the Pentagon and White House. In April 2003, he became leader of the Iraq Constitutional Commission.

A book by Feldman appeared in April, called *After Jihad—America and the Struggle for Islamic Democracy*, in which he developed a strategy for the U.S., to promote democracy in the Islamic world. Feldman, according to a July 2 profile in the German daily *Frankfurter Allgemeine Zeitung*, believes there is no democracy, in a Western sense, in Islam, but that it is possible to establish governments which do not become theocracies (he names Pakistan and Morocco), and which are secular (Turkey, his model).

Feldman left the United States for Baghdad in June, and is supposed to work with others on the commission to draft a constitution. Another commission figure is Khaled Abu El Fadl, originally from Najaf, who was in exile in Sweden until recently. He is the legal advisor to the occupying powers on matters relating to the constitution, and reportedly favors a constitution which does not characterize Iraq as Arab or Islamic. He is also reportedly pro-Israel.

The problems Feldman sees in writing an Iraqi constitution revolve around settling two issues: the separation of religion and the state; and the question of federalism. One error he says must be avoided in Iraq: “One should not confuse free elections with democracy, since a democracy is defined by freedom and rights” as the *Frankfurter* newspaper paraphrased him.

### Other Shi’ite Leaders Agree

The American and British occupying forces face the problem, among others, that if they allow free elections, they may find that a majority will vote for Shi’ite leaders, creating a situation which the occupying powers do not control. It is for this reason that elections planned, for example, for city councils were cancelled, and officials were simply named by the U.S. military command. Bremer’s plan for a constituent assembly follows the same method. Now, Sistani’s *fatwa* has decreed that such a method is unacceptable. Other Shi’ite leaders have lined up behind him, making it clear that Bremer will have to take a new approach.

In written answers to press queries, Sistani elaborated on his position, saying, “The form of rule in Iraq should be done by the Iraqi people through general elections in which

every Iraqi chooses a representative in a council that will have the job of writing a constitution, which should be later approved by the people.” Mohammed Baqir al-Hakim, leader of the Supreme Council for the Islamic Revolution in Iraq (SCIRI), and Muqtada al-Sadr, the third Shi’ite leader, made clear on July 1 that they agree. Al-Hakim stated on July 1, “Our demand is that a government be formed by the Iraqis and work to end the occupation by peaceful means.” Al-Hakim said that any Iraqi government should “respect the rituals and values of Islam as well as the beliefs of followers of other religions.”

One pretext cited by the U.S., for blocking an organic democratic process, is that neighboring Shi’ite Iran would exploit the situation, and wield its influence to prompt an Iranian-style Islamic revolution in Iraq. All three leading Shi’ites inside Iraq have roundly denied such claims; Sistani denied any Iranian influence on his movement. “We don’t have any contact with any foreign side when it comes to Iraqi affairs,” he said. “All governments should respect Iraq’s sovereignty, the will of the Iraqi people, and not interfere in their affairs.” Al-Hakim, though a guest of Iran during his long years in exile, also denied Iran could steer his large movement.

The irony of this is, as Iranian sources emphasize, that it is less a matter of Iran’s influencing Iraq, than the contrary: The constitution for the 1979 Iranian revolution was written in Najaf, where Ayatollah Khomeini was then based; and Ayatollah Sistani wields maximum authority among Iranian Shi’ites, as he is considered the highest-ranking scholar in the Islamic world, especially in the *hawzah* (theological schools).

In an interview with the Iranian Student News Agency (ISNA), reported July 3, Sistani warned of plans by “other countries” against Iran, similar to what had happened to Iraq. His message contained several guidelines: Iranians must be vigilant; all forces in the country—intellectuals, government representatives and students—must work together, in unity, to solve the country’s problems, without recourse to outside forces; freedom must be protected, and this means taking into consideration the ideas of others; religion must be respected, and so forth.

The events in Iraq during June, culminating in Ayatollah Sistani’s *fatwa*, begin to move toward a dual-power situation in Iraq. If the occupying powers were seriously committed to introducing democracy to Iraq, they would respect the guidelines set by these, as well as other, non-Shi’ite Iraqi leaders. If not, as SCIRI leader al-Hakim threatened, in remarks to the *Times* of London July 3, they will rethink their actions. “We call for using legal and peaceful methods in order to put an end to this invasion and occupation, by using at first the peaceful methods and ways,” he said. “If this will not give success, then we will think about other methods.”