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Iraqi Resettlement: Why Congress Won't Act

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Abstract

After making an excellent case for the plight of Iraqi asylum seekers who have served as valuable allies to the United States in Iraq, Joseph Huff-Hannon's article suggests that Congress should play a stronger role in developing a resettlement policy to allow Iraqis, who have been on "our side," to come to the U.S. Given the current political climate on Iraq—and with Congressional Democrats desperate to score some kind of victory in its battle with the Bush White House—what exactly is holding them back?

Keywords

Human rights, Iraq, War, Refugees, Displaced peoples

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Iraqi Resettlement: Why Congress Won't Act

by Daniel J. Whelan

After making an excellent case for the plight of Iraqi asylum seekers who have served as valuable allies to the United States in Iraq, Joseph Huff-Hannon's article suggests that Congress should play a stronger role in developing a resettlement policy to allow Iraqis, who have been on "our side," to come to the U.S. Given the current political climate on Iraq—and with Congressional Democrats desperate to score some kind of victory in its battle with the Bush White House—what exactly is holding them back?

While Congress is usually deferential to the White House in setting broad foreign policy goals when it comes to refugee and asylum policy, Congress's implied Constitutional authority extends from its express powers to, for example, regulate foreign commerce and establish a uniform naturalization policy. Congress thus would stand on solid Constitutional ground were it to craft an Iraqi resettlement policy.

Furthermore, Congress has been able to exert its will against the President, even when the latter wanted to extend, rather than restrict, asylum status for certain populations. In 1992, the U.S. Coast Guard intercepted more than 40,000 Haitians who fled after the ouster of Jean-Bertrand Aristide in late 1991. These refugees were taken Guantánamo Bay for initial asylum-screening. Eleven-thousand were allowed to continue to the U.S. to seek asylum formally. However, 217 of those who were cleared were nevertheless further retained at Guantánamo. They were HIV-positive, and therefore barred entry into the U.S. But they legally could not be returned to Haiti (that would constitute *refoulement*). They were stuck in limbo, a kind of "permanent exile."

Since 1987, it had been U.S. policy to exclude anyone with HIV from entering the country—whether tourist, businessperson, immigrant, or asylum seeker. At first, this exclusion was based on specific legislation—an amendment to the immigration law which added HIV to a Congressionally-determined list of "dangerous and contagious diseases" that precluded aliens from entering the U.S. A 1990 overhaul of the Immigration and Naturalization Act replaced the Congressional "list" with a blanket provision allowing exclusion of anyone carrying a "communicable disease of public health significance"—but what would be such a disease was now to be determined by the Secretary of Health and Human Services (HHS), not Congress. Nevertheless, Louis Sullivan—the-then Secretary of HHS—was feeling significant pressure from conservatives and "determined" that HIV was just such a "communicable disease." That policy was still in effect when the Haitian crisis began.

Bill Clinton, who came into office in early 1993, had vowed to resolve the plight of the Guantánamo detainees—and the 1990 Immigration Law was on his side. He soon directed his Secretary of HHS, Donna Shalala, to remove HIV from the list. But Senate stalwarts (led by Republicans, but joined by plenty of Democrats) moved to block him. They effectively placed HIV permanently on the list "communicable diseases of public health significance" through an amendment to an important reauthorization for the National Institutes of Health (NIH). Unable to justify vetoing a bill that included new money for HIV/AIDS research, Clinton signed it. The matter of the Haitian refugees was finally settled by a federal judge who ruled the detention (but not the policy) unconstitutional. While those committed to human rights and sound public health

(myself included) may find Congress' actions in 1993 to be reprehensible, we see how it was able to force the president's hand and prevail.

So Congress is standing on solid Constitutional ground, and there is a strong precedent in the Haitian HIV case which demonstrates that Congress does have significant "power" to force the President to adopt a policy he may find politically misguided (or embarrassing). On top of that, we must consider how attractive the political nectar of a victory over the White House on some, indeed *any*, aspect of Iraq policy must be to Congressional Democrats. So what is to stop the current, Democratic Congress from using its authority to address not only a serious moral and humanitarian need (indeed, *responsibility*) but also to score political points in its battle with the White House over Iraq policy?

I can only come up with one possible answer—and one that, surprisingly, Huff-Hannon completely overlooks. No matter what the contours of the debate in Washington about Iraq policy, no one wants to see a failed state sitting like a very lonely chick under the covetous eye of an Iranian wolf. At the heart of the debate is whether the U.S. is making things better or worse by following the current policy (U.S. casualties notwithstanding). Congressional Democrats want a stable Iraq. But a stable Iraq means stable, secure Iraqis committed to building their nation and the institutions of government, civil society, and some kind of market economy. Nevertheless, since at least 2005, Iraq has been hemorrhaging talented men and women who are key to any such future for Iraq. If Congress were to open the resettlement gates, the flood might very well put to death forever any possibility of salvaging the wreckage that Iraq has become.

No matter how noble and humanitarian a resettlement policy would be, perhaps those stakes are simply too high—even for a Democratic Congress.

Daniel J. Whelan (Ph.D., DU, 2006) is currently Assistant Professor of Politics and International Relations at Hendrix College. He was founding editor (with Laura A. Hebert) of HRHW from 2001-2004, and Senior Editor from 2004-2007. He now serves on the HRHW Editorial Review Board. His doctoral dissertation, "Interdependent, Interrelated, and Indivisible Human Rights: A Political and Historical Investigation," was awarded the 2006 Best Dissertation citation by the Human Rights Section of the American Political Science Association.