‘I am Iraq’
Law, life and violence in the formation of the Iraqi state

Perveen Ali*

1. Introduction

Following the 2003 war in Iraq, the Children of Iraq Association published a photograph of a small girl standing in a field of rubble, holding a hand-drawn sign stating, ‘I am Iraq’.1 While evocative in its own right, raising poignant questions about the human cost of war, this image also revealed the biopolitical cast of a sovereign exceptionalism that led to the invasion of Iraq and its devastating aftermath. International military forces, state actors and insurgent militias, in their violent bids to assert their claims for sovereign authority in crafting a new Iraqi state, realised their visions for who would belong within its borders in bodily terms. They conflated state with society, categorised citizens according to their ethno-sectarian identities and targeted those deemed unworthy of protection with extreme violence, forced displacement and often death.

This paper investigates how law, life and violence combined to configure spaces of sovereign power in the 2003 invasion of Iraq and the subsequent rise of the insurgency. First, it theorises how sovereignty is produced and maintained through legal practices exercised upon the bodies of the population, producing specific spatial formations of law and political ordering. Second, it maps the practices of law and violence that were employed in the invasion of Iraq and its subsequent occupation, including legal justifications for the use of force, frameworks for neoliberal democratic governance, functional states of emergency and normative discursive practices. Third, it considers how these technologies were also spatial practices of territorialisation and citizenship in the formation of the new Iraqi state, as they enabled both the spatiotemporal expressions and contestations of sovereignty at the level of the international state system, within the context of the state formation process, and through decisions on the life of the population. Finally, it reflects upon the challenges that these new configurations of sovereignty

* Perveen Ali (email: P.R.Ali@lse.ac.uk) is a PhD Candidate at the Law Department, London School of Economics and Political Science, Londen (UK). She is currently conducting research on sovereignty, law and refugee protection in the aftermath of the 2003 Iraq war.
1 See <http://www.coia.org.uk/>.
in Iraq pose for sovereignty’s traditional grounding within state territories and legitimation through law.

2. Legal practices and the production of political space in Iraq

An examination of how sovereignty was reconfigured in the war in Iraq first requires an explanation of the theory of sovereign power that will be investigated here. Sovereign power is located, exercised and produced through the management of the life of populations, or practices of biopolitics, which make human life the target of political power. In a biopolitical world, the sovereign enacts decisions regarding whether one will have access to political and legal protection and recognition or will be excluded from it, living in an existence of unprotected basic survival, in a form of life that Agamben termed ‘bare life’.

The location of sovereign power in decisions upon life (whether one will have access to politically qualified and protected life or be relegated to bare life) is most clearly evident in times of emergency when states enact exceptional measures against individuals whom they deem to threaten their security and identity. State actions that restrict such persons’ rights or lift their legal protection altogether, relegateing them to an existence of bare life in what Agamben referred to as a ‘state of exception’, assume an extra-legal quality, as these persons are no longer recognised or protected by law. Concentration camp survivors, Guantanamo Bay detainees, and refugees have all been cited as persons who were subjected to such emergency measures, who lost the protection and recognition of the law and who were reduced to their bare lives, living between exile and belonging, life and death, as their biological lives were laid bare before the authority of state power. Sovereignty is this power that defines both the law and those situations in which law no longer holds.

How might one understand the meaning and operation of bare life in a state of exception, and what might this reveal about the workings of sovereignty as a spatial practice? Can the state of exception, when translated to a lived space, ever be entirely a space where bare life exists in a relation of pure exclusion from the political by a unilinear exercise of sovereign power? The lived material spaces produced by exceptional measures may be far more contested and processual. Persons relegated to states of exception are neither neutral nor passive, and they continually act to contest or legitimise not only their treatment within the space that results, but also the decisions that placed them there. The state of exception, when translated into lived human space, has been argued by critics of Agamben’s work not to be purely anomic space, devoid of human agency or sociality, but always a social space where the production of bare life outside of state law can yield new forms of life and alternative forms of law, producing two laws that do not read each other, and creating possibilities for the emergence of an emancipatory politics.

---

5 S. Perera, ‘What is a Camp…?’, 2002 *Borderlands* 1, no. 1, pp. 175, 187.
8 E. Laclau, ‘Bare Life or Social Indeterminacy?’, in Calarco & DeCaroli, supra note 7, pp. 11-22.
9 Ibid., DeCaroli, supra note 7. See also A. Murray, *Giorgio Agamben*, 2010, p. 134.
The spaces in which humans survive in a state of exception are therefore produced through the confluence of the constant exercise of the sovereign power to except and the ways that the excluded negotiate this power. Recognising this, Kennedy called for an examination of how hierarchy and domination are reproduced and what happens when the spaces in between the centres and peripheries come to construct knowledge of one another – how ‘walls and will’ reinforce differences between them. It is critical to examine what practices enable sovereign power to function and maintain the legitimacy of the connection between territory and authority, and what practices undermine its force in a given social context. In a related vein, Latour advised that it is important to understand how sovereignty is ‘rooted and routed’ in practices, to produce ‘insides and outsides’, to ‘subjectify and objectify’, to create shared notions of place that empower, reinforce, and remake particular economic, political, and social orders. Foucault similarly proposed that it is necessary to map the spaces that expose how power and knowledge function to produce the present, how categories of inclusion and exclusion are ultimately spatial relationships and ‘geometries of negativity’. These geometries reveal the liminal spaces occupied by figures produced by a society attempting to position itself over and in contrast to those deemed less than human. They also expose the operations of sovereignty as contingent and processual, rather than as fixed, reified, or rooted in a particular territory or space. In so doing, they can unwork and expose the processes by which sovereignty is normalised and internalised within a particular social space.

Towards such a project of mapping the spaces of contested sovereign power in the Iraq war, the following sections detail four categories of practices of law and violence enacted by international, state, and non-state actors in their competition for control and definition of the new Iraqi state, as they worked to produce new spatial forms of political ordering, which in turn gave such expressions of law both materiality and meaning. These categories include normative discursive practices and legal justifications for military intervention, the installation of neoliberal democratic governance, the imposition of states of emergency and the violent expression of ethno-sectarian normativity. In mapping their enactment on the bodies of the Iraqi population, it is possible to consider not only how these practices functioned as sovereign decisions on whether to except particular bodies from political and legal protection in the name of emergency, but also how in the translation of these states of exception into lived social spaces, that same sovereign power rooted in the ability to decide upon exception was then alternatively appropriated, contested, or undermined in accordance with competing visions of state and nation.

11 Ibid., p. 48.
13 Ibid., ‘Michel Foucault’, p. 124.
14 P. Major-Poetzl, Michel Foucault’s Archaeology of Western Culture: Towards a New Science of History, 1983, p. 120.
2.1. Normative discourses and legal justifications for military intervention in Iraq

Normative discourses and legal justifications for military intervention in Iraq were a key set of practices that spatially both challenged and produced the relationships between sovereign states within the international order and the law that governs them. Both the demarcation of outlaw states and assertions of political authority beyond state territory by the US and its allies in defiance of international law on the use of force challenged conceptions of sovereign equality in the international state system, recalling earlier forms of hierarchical ordering.

The US first employed normative discursive practices in the project of framing and marking Iraq as an outlaw state in the international state system. President Bush stated that ‘this is a regime that has something to hide from the civilised world’, recalled the earlier designation of Iraq as a ‘rogue state’ and named Iraq as part of the ‘axis of evil’. He also capitalised upon the 9/11 terror attacks by linking weapons of mass destruction (WMDs) in Iraq with terrorist threats against Americans, stating that the US ‘greatest fear is that terrorists will find a shortcut to their mad ambitions when an outlaw regime supplies them with the technologies to kill on a massive scale.’

What were the productive purposes and effects of such rhetoric? Zunes suggested that the focus on nuclear proliferation provided a pretext for ongoing US military presence in the Middle East and for attacking any states which challenged its dominance, thereby asserting its power as a ‘world sovereign’. This expression of expanded sovereign power was the most recent iteration of similar positions adopted in the 1992 Defense Planning Guidance paper, the neoconservative 1997 Project for the New American Century paper *Rebuilding America’s Defenses*, the 1998 Iraq Liberation Act, and the 2002 US National Security Strategy.

Such rhetoric also may have indicated a retreat to an earlier State system dominated by discourses of ‘civilisation’ and ‘barbarism’, the (relative) prosperity and peace of the “civilised” West (…) bought by exporting ruthless violence and destruction to this “barbarian” Outside’. Simpson noted the emergence of legal norms that marked Iraq not only as a delinquent state in its failure to comply with international law, but also as no longer worthy of enjoying the full rights and benefits associated with its international legal personality. He pointed to the continuity between the early Eurocentric system of ‘civilised states’, which trained other states in the ways of civilisation towards the goal of eventual independence, and those

---

17 Ibid.
27 Simpson, supra note 25, p. 342.
‘Great Power’ states at the core of the UN system, which attempted to domesticate ‘outlaw’ states into conforming to the international order.\(^{28}\)

This discursive regime also ordered the conceptual frameworks employed by proponents of the subsequent military intervention in Iraq. Therefore, although there was neither direct evidence of the alleged development of a WMDs programme in Iraq,\(^ {29}\) nor a found link between Iraq and the 9/11 attacks,\(^ {30}\) the Bush Administration still argued that military action was needed to prevent the spread of WMDs and to promote democracy in Iraq.\(^ {31}\) In support of this project, the UK affirmed its commitment to regime change in July 2002.\(^ {32}\) On 16 October 2002, the US Congress passed resolution P.L. 107-243 authorising the President to use the US military to defend the US national security from the threat posed by Iraq.\(^ {33}\) On 8 November 2002, the UN Security Council (UNSC) passed Resolution 1441, which gave Iraq a ‘final opportunity’ to meet its disarmament obligations or ‘face serious consequences’.\(^ {34}\) With the exception of Britain, however, most states were not ready to agree to a resolution calling for military action against Iraq. The US responded by proposing a resolution concluding that Iraq did not take the ‘final opportunity’ it was granted in Resolution 1441, which suggested that the US did recognise the legal requirement for a further resolution to authorise the use of force; however, this proposal was tabled for want of support.\(^ {35}\)

The US, in its ‘preemptive self-defense’ policy,\(^ {36}\) and the UK, in its ‘revival doctrine’,\(^ {37}\) therefore turned to the argument that the use of force was already legally authorised.\(^ {38}\) Attorney General Lord Goldsmith of the UK issued opinions on 7 and 17 March 2003, first recommending a UNSC resolution authorising the use of force, and then ten days later reversing his position, concluding in a short statement that the use of force without a UNSC resolution would be lawful.\(^ {39}\) The White House reported to Congress on 19 March 2003 that the material breach of UNSC Resolution 687 revived the authorisation to use force under its previous Resolution 678. These assertions were further supported by legal scholars Ruth Wedgwood in the US and Christopher Greenwood in the UK.\(^ {40}\)

Therefore, outside of the UN Security Council, the US and the UK unilaterally declared Iraq to be in violation of Resolution 1441 and gave Saddam Hussein 48 hours to give up power and leave Iraq. On 20 March 2003, having formed the Coalition Forces, they launched Operation...
Iraqi Freedom with an aerial bombing campaign and a ground troop invasion from Kuwait. They secured Iraq’s oil facilities and then entered Baghdad. The combat operations were declared to be at an end on 1 May 2003,41 and Saddam Hussein was captured seven months later.42

Despite the legal justifications espoused by the US and the UK, the legality of the invasion was treated to heavy debate.43 From the perspective of international law governing the use of force, the invasion was largely viewed as an illegal war. However, from the perspective of the states which were positioning themselves as the ‘Great Powers’ in the international state system, the invasion was framed more as a form of legalised exceptionalism. The legal arguments employed by these states were practices that functioned to extend their sovereign reach and to justify excepting Iraq from the guarantees of the international law on the use of force in the name of emergency and protecting global civil society from threats of terror. Some scholars characterised these arguments as an inversion of legal standards governing the use of force and as the ‘exception now becoming the norm, the norm becoming the exception’,44 permitting systematic breaches of universal human rights in an amoral space,45 and masking the rogue state that the US itself had become.46

The Coalition Forces sought recognition by the UNSC post-invasion, successfully securing the passage of US-sponsored Resolution 1483, recognising the UK and the US as ‘occupying powers under unified command’ in Iraq and involving the UN in post-war reconstruction.47 However, critics argued that this was effectively a ‘legalisation of the outcome of an illegal invasion’,48 giving the appearance of multilateralism to a unilateral act, imbuing the concept of democracy with ‘legal sophistry and political manipulation’,49 and providing a ‘veneer of non-proliferation law cover’ at the least and formal legalism at the most.50 In 2004, the UN Secretary-General Kofi Annan pronounced the Iraq war as illegal.51

2.2. Instilling neoliberal democracy
Following the war, US policies of reconstruction, economic liberalisation and sectarian apportionment of Iraq’s government in the project of instilling neoliberal democracy were also practices of law that facilitated new and often violent spatial configurations of sovereignty. Assuming that most Iraqis would welcome the invasion and embrace democracy,52 the Bush administration devoted scant resources to planning what would happen after Saddam Hussein was deposed,53 and established the limited Office of Special Plans to supervise the reconstruction process.54 Under this office, leaders were selected from exiled Iraqi and Kurdish political groups

42 UN Doc. S/PV.4914.
48 Hallenberg & Karlsson, supra note 29, p. 239.
49 Shiner & Williams, supra note 43, p. 54.
50 Sands, supra note 35, pp. 182-184; Žižek, supra note 26, p. 298.
allyed with the US Department of Defense to form the Iraqi Interim Authority (IIA) to draft a new constitution and to hold elections. The process was envisioned as a rapid transition to democracy, which would eliminate the need for a detailed state-building project, since the new government would immediately assume such responsibilities. In keeping with this assumption, the US Office of Reconstruction and Humanitarian Assistance (ORHA) was mandated to deal with immediate humanitarian crises from the invasion rather than with any longer-term needs for reconstruction.55

However, the envisioned transition to democracy proved to be far more arduous. The Iraqi exiles installed in the IIA had little political legitimacy or reach amongst local Iraqis.56 The Coalition Provisional Authority (CPA) replaced the OHRA in May 2003,57 but it also remained external to Iraqi society, dictating the actions of the IIA.58 In addition, the primary focus of the US, prior to the establishment of any democratic process,59 was to radically liberalise the Iraqi economy and promote corporate-led privatisation and marketisation by abolishing most restrictions on foreign direct investment and permitting foreign domination of the banking sector.60 These measures displaced the private sector,61 and also destabilised the Iraqi business class who could not compete.62 Also, 30,000 Ba’athist civil servants were removed under the De-Ba’athification policy,63 and 400,000 police and armed forces were disbanded.64 In the power vacuum that resulted from these measures, the state apparatus was significantly destabilised,65 and lawlessness and chaos emerged.66 Many of those removed from their governmental posts also began to revolt, despite later attempts to rescind some of these measures.67

The project to promote a neoliberal democracy therefore produced ‘illiberal effects’ that, in Foucauldian terms,68 themselves became instruments of structural violence against the Iraqi social body. Iraqis were plunged into an economic, security and social crisis evidenced by skyrocketing unemployment; food, water and electricity shortages; the rise of criminal gangs; and increased infant mortality rates.69 The US failed sufficiently to repair Iraq’s severely damaged water supply,70 restore electrical facilities,71 or ensure access to adequate housing for the internally displaced,72 and these remained protracted problems that continued long after the invasion.73

Herring and Rangwala observed that, in this context, the state was unable to establish itself as the primary service provider, which was critical to its legitimation and the management of Iraqi society by non-coercive means. Unable to rely upon the state for the provision of these

55 Herring & Rangwala, supra note 53, pp. 12-13, 82-83.
56 Ibid., p. 15.
57 P. Bremer, Coalition Provisional Authority Regulation Number 1, CPA/REG/16 May 2003/01, 16 May 2003.
58 Herring & Rangwala, supra note 53, p. 94.
61 Bhatia, supra note 54, p. 219.
62 Harding, supra note 59, p. 142.
64 Under CPA, Order No. 2, 23 May 2003.
65 UN High Commissioner for Refugees (UNHCR), Guidelines Relating to the Eligibility of Iraqi Asylum-Seekers, October 2005, p. 2.
69 Harding, supra note 59, p. 161.
71 UN Doc. S/PV.4944.
72 UNHCR, UNHCR Return Advisory Regarding Iraqi Asylum Seekers and Refugees, September 2004.
services, Iraqi civilians began to align themselves more closely with political and sectarian groupings that could better provide these services through systems of patronage. Patronage, re-emerging from Iraq’s authoritarian past as the key mechanism for structuring power outside of the state and binding individuals to specific state personnel, caused political fragmentation, resulting in sectarianism beginning to structure politics and society.74

Faced with these setbacks, the US therefore assumed greater direction of the state-building process, a policy presented as necessary until the Iraqis were ready to assume control, in many respects paralleling the formation of the new state of Iraq under the British-administered Mandate established by the League of Nations as it was couched in the language of eventual sovereign statehood.75 This position was reiterated by the UNSC, in its call upon the occupying powers to work ‘towards the restoration of conditions of security and stability and the creation of conditions in which the Iraqi people could freely determine their own political future’.76

However, the US engaged in practices of sectarian balancing; limiting the authority of state institutions; and dispersing power between the state apparatus and political parties, local groups and tribal leaders.77 These practices functioned to institutionalise even further already growing sectarian divisions and the fragmentation of sovereign power along sectarian lines. The CPA-controlled IIA was replaced by the Iraqi Governing Council (IGC) on 13 July 2003,78 again comprised of US-aligned parties in Iraq, including exiles and representatives from the Shi’ah Islamists, secular US allies and the Kurds. The appointments were based upon the relative proportions of sectarian and ethnic groups in the country.79 Using the state apparatus to achieve factional goals, each political party represented in the IGC secured control of a different government ministry. The US responded by trying to constrain the IGC’s powers by retaining financial and military control and balancing the IGC’s power against that of tribal actors, thereby placing local leaders above national political parties and further undermining the coherence of the state.80

On 8 June 2004, the UNSC passed Resolution 1546, declaring the end of Iraq’s occupation and the beginning of its exercise of full sovereignty and independence to be 30 June 2004.81 Thereafter, the IGC was replaced by the Iraqi Interim Government (IIG), but many segments of Iraqi society felt excluded from the political process,82 and on 30 January 2005 the national elections held for the Transitional National Assembly (TNA) resulted in a government dominated by Shi’ah and Kurds, with the notable absence of significant Sunni participation.83

The referendum of 15 October 2005 to approve the new draft Constitution entrenched sectarianism further.84 Although they were included in the drafting committee,85 Sunni Arabs were marginalised in the drafting process and their objections overridden. Except for the Iraqi Islamic Party, no other Sunni Arab political group would support the new constitution. A two-

74 Herring & Rangwala, supra note 53, pp. 73, 80, 97, 131-132, 136-137, 159.
76 UNSC, supra note 47.
78 UN Doc. S/RES/1500, Para. 1.
82 UN Doc. S/PV.5099.
83 See UN Doc. S/PV.5161.
85 UN Doc. S/PV.5204.
thirds majority vote against the constitution in three governorates was required to veto it, and Sunni Arab parties unsuccessfully tried to use this provision to block the constitution. Therefore, Iraq emerged as the site of competition for sovereign rule, rife with sectarian and political tensions. Although opinion polls showed that the majority of Iraqis desired a strong centralised authority in the state, the institutionalisation of sectarianism, the fragmentation of state power along sectarian lines, the externalisation of the state from civil society and the state’s dependence upon foreign actors for its authority, resulted in a proliferation of claims by different actors for sovereign control of the state.

2.3. States of emergency

In the face of increasing sectarianism and political fragmentation, a predominantly Sunni Arab insurgency emerged, pitting their bids for sovereign power against the assertions of the Coalition Forces’ control over the political process and the claims of certain Shi’ah and Kurdish parties for control of the state. Shi’ah militias such as the Badr Organisation and the Mahdi Army also emerged in a challenge to the US and UK occupation of Iraq, and later in a challenge to the Sunni insurgency, as well.

The insurgent groups were largely nationalist Islamists, all arguing the legitimacy of their cause against an illegitimate occupation and government, although they differed in some ways ideologically and in the scope of their goals. The Sunni groups were variously comprised of former Ba’athist officials and officers of the previous Iraqi Army, nationalist Islamist organisations, Iraqi Salafists, Iraqi tribes and transnational Salafi jihadists. The insurgents engaged in attacks against the occupying US and British forces, soon widening their scope to target persons perceived as working in cooperation with or supporting the occupiers or the US-backed political process, including international aid and UN agencies, foreign contractors, intellectuals, medical professionals, journalists, lawyers and judges, athletes, artists and singers, the police, politicians and government officials.

The rise of the insurgency signaled the prospect of prolonged military occupation in the country, involving violent counter-insurgency operations, increasing militarisation of the country and derogations from human rights law under the auspices of emergency. In response to the insurgency, states of emergency were instituted that led to the lifting of legal protections, ambiguities in the application of the law, and the increasing militarisation of Iraq. They became a further set of legal practices that enabled new and increasingly violent expressions and iterations of sovereignty in Iraq.

87 Ibid., pp. 271-273.
88 Ibid., p. 140.
89 N. Rosen, The Triumph of the Martyrs – A Reporter’s Journey into Occupied Iraq, 2006, Chapter 1.
90 A. Hashim, Iraq’s Sunni Insurgency, 2009, p. 17-25, 60, 64.
92 UNAMI, Iraq Media Monitoring, 10 March 2005.
95 Committee to Protect Journalists, ‘For Sixth Straight Year, Iraq Deadliest Nation for Press’, 18 December 2008.
97 UNHCR, supra note 94, p. 184.
99 UNHCR, supra note 65, pp. 14, 32.
On 16 October 2003, the UN Security Council passed Resolution 1511 to establish a US-led Multi-National Force (MNF) in Iraq to help ‘restore peace and stability to a sovereign and independent Iraq’. The following month, the US military escalated its use of force against insurgents by launching Operation Iron Hammer in Baghdad and Operation Ivy Cyclone II in Tikrit, Ba‘qubah, Kirkuk and Baghdad, and then, in 2004, attacking the Mahdi Army, and Falluja.

By referring to the insurgents as ‘terrorists’, the Coalition Forces constructed distinctions between authentic and enemy expressions of sovereignty. They excluded those marked as terrorist from any positive legal status, and subjected them to unmitigated violence. Iraqi state sovereignty was functionally ‘suspended’ in enemy-controlled areas of Iraq until the Coalition Forces/MNF could bring these territories back under state control.

However, given the high levels of civilian casualties, the violence used to secure the safety of the Iraqi population in the end destroyed many of those whom it ostensibly was intended to protect. In Falluja, for example, the first operation resulted in hundreds being displaced. Iraq Body Count estimated that of the 800 deaths following this operation, 572 were civilians, a death toll that the IGC deemed both ‘illegal and totally unacceptable’. After the second operation in November, 80% of the city’s population was displaced, and 1,200 were killed. Iraqi security forces deserted their posts in protest or to support the insurgency, decreasing the cause of most killings in these insurgency and counter-insurgency operations, the Coalition Forces/MNF could bring these territories back under state control.

In the absence of reliable security forces, in 2004 the US turned to local militias for support in its counter-insurgency efforts. These brigades were controlled by tribal or sectarian sheikhs and government ministers. The truce concluded between the US forces and insurgents in Falluja in May 2004 established a Falluja Brigade to control the city, ironically comprised mostly of former insurgents, resulting effectively in the US recognition of the militia. Such brigades worked with the MNF in alliances of convenience, further institutionalising the fragmentation of the state. Hence, when the state lost its monopoly on violence, it attempted to reconstitute itself through military interventions that employed the use of proxy forces, revealing ambiguities in the meanings and forms of resistance.

Having little legitimacy amongst Iraqis who viewed the US occupation as the proximate cause of most killings in these insurgency and counter-insurgency operations, the Coalition Forces/MNF and the Iraqi State engaged with the population in increasingly coercive and militarised terms. They promoted the use of force through a surge of troops in 2007, the

---

103 Harding, supra note 59, p. 115.
105 See UN Doc. S/PV.4984 for comments by Lakhdar Brahimi.
108 See Simpson, supra note 25, pp. 84, 86.
109 UNHCR, supra note 72.
111 J. Steele, ‘Shells and Rockets were Falling Like Rain’, *Guardian*, 12 April 2004.
113 Herring & Rangwala, supra note 53, pp. 35, 197-199.
114 Ibid., pp. 29-31, 35, 200-201, 208.
117 See UN Doc. S/PV.5639.
proliferation of private security firms and the strengthening of Iraqi security forces. The growing militarisation of Iraq was institutionalised by the establishment of the Ministry of Defence, the Ministry of Interior and the Ministerial Committee on National Security. It was also reflected in the division created between the civilian CPA, staffed by less than 1,200 personnel, and the military Coalition Joint Task Force 7 (CJTF-7), having over 150,000 personnel.

Herring and Rangwala observed that the US military came to control post-war reconstruction and governed Iraq more in accordance with principles of fighting the war on terror than with those of administering and developing civil society. The US allocated more resources towards the increased training of the Iraqi security forces to counter the insurgency than towards developing Iraq’s civil infrastructure. 33% of the Iraq Relief and Reconstruction Fund was allocated to the military Coalition Joint Task Force 7 (CJTF-7), having over 150,000 personnel.

On 6 July 2004, the IIG authorised the Order for Safeguarding National Security, a state of emergency law containing some provisions for safeguarding citizens. However, despite declarations of states of emergency, most arrests were made under the auspices of the MNF and therefore were not constrained by such legislation. Hence, many Iraqis were detained by the MNF and Iraqi Security Forces (ISF) without due process of law in Iraqi courts. Their detentions did not fall within the ambit of state penal law, but were carried out under an ambiguous form of martial law. There were further reports of operations conducted by the MNF/ISF...

118 See UN Doc. S/PV.5189; Herring & Rangwala, supra note 53, pp. 91-95, 119, 162.
119 UN Doc. S/PV.4071.
120 CPA Inspector General, Management of Personnel Assigned to the Coalition Provisional Authority in Iraq, 25 June 2004, pp. 1, 3.
121 Herring & Rangwala, supra note 53, pp. 38, 91, 99-100, 102.
122 UN Doc. S/PV.5949.
126 Coalition Provisional Authority, The Central Criminal Court of Iraq (Order no. 13, revised, amended), 22 April 2004.
130 UNHCR, supra note 65, p. 3; UK Home Office, supra note 124, p. 3.
131 Herring & Rangwala, supra note 53, p. 37.
132 UNHCR, supra note 65, p. 3.
133 See DeCaroli, supra note 7, p. 63.
resulting in mass arrests, killings, excesses of violence, torture and extra-judicial executions,\textsuperscript{134} the most public being the spectacle of inhuman and degrading treatment perpetrated by US military forces at the Abu Ghraib prison.\textsuperscript{135}

The authority to exercise violence was also contracted out to private firms by the Bush administration to save money and promote privatisation, such as the Blackwater security firm that killed seventeen civilians in September 2007.\textsuperscript{136} In the early stages of the occupation, these firms were comprised of around 20,000 personnel. The US had declared them immune from prosecution in Iraq and subject only to the laws of their countries of citizenship,\textsuperscript{137} demonstrating how private actors were enlisted to carry out acts traditionally within the purview of the state. As a consequence, it was unsurprising that when US combat troops withdrew from Iraq in August 2010, they left behind numerous private security firms in their stead, increasing the number of these private forces by then on the ground from 2,700 to nearly 7,000.\textsuperscript{138}

As the MNF, the Iraqi state and private contractors became increasingly predatory upon Iraqi citizens due to the lack of sufficient constraints on their actions,\textsuperscript{139} the transfer of formal sovereignty to the Iraqi government was not automatically accompanied by a strengthened application of the rule of law. Iraqi police and military forces continued to commit numerous human rights violations,\textsuperscript{140} even imposing the death penalty in some cases based on confessions gained from torture.\textsuperscript{141} Such derogations from international standards occurred in spite of the Iraqi government’s efforts to investigate such abuses, enshrine human rights principles within its new constitution and train its security forces in human rights law.\textsuperscript{142}

\textbf{2.4. Ethno-sectarian normativity}

The CF/MNF’s heavy-handed military responses to the Sunni insurgency and the privileging of the Shi’ah-Kurdish alliance in the new Iraqi government deepened sectarian tensions to the point that violent competition for who would exercise control of the state was no longer restricted to fighting the occupation and its supporters. The emergence of new ethno-sectarian norms of identity and belonging also functioned as normative discursive practices that drove competing claims for sovereign authority in the new Iraqi state as different sectarian groups fought to assume control of the state formation process.

Rather than chaotic or anarchic responses to political instability, these parties fought to assert their political authority and to promote their respective political visions of a new Iraq along sectarian lines, enacting a project to instate territorially circumscribed national identities.\textsuperscript{143} Such competing claims for sovereign power in Iraq encountered the extended sovereign power of the MNF forces and contested the MNF’s efforts to instil a new Iraqi government. These contestations undermined the occupiers’ political authority; however, at the same time they also replicated the structure of sovereign power in fragmented forms. As the police chief of Basra

\begin{footnotesize}
\begin{itemize}
\item 139 See Herring & Rangwala, supra note 53, p. 264.
\item 140 UNAMI, supra note 91, p. 14.
\item 142 UN Doc. S/PV.5386.
\end{itemize}
\end{footnotesize}
aptly noted in 2007, ‘Each party believes that it represents the law and each element thinks of himself as a state hero’.144

Who were the parties engaged in the violent competition for sovereign control in Iraq? The Sunni insurgency was by this time divided by infighting, and amongst the Shi’ah were divisions between the poor (al-Sadr’s movement) and middle-class (Islamic Supreme Council of Iraq and al-Dawa Party).145 Sectarian violence was exacerbated by the control of many local police and security forces by Shi’ah sectarian groups, primarily the Badr organisation and Al Mahdi Army,146 which targeted Sunnis perceived to be supporting the insurgency with arbitrary arrests and detention, torture and degrading treatment, and extra-judicial executions.147 Violence also broke out amongst the Kurds, Arabs and Turkmens in 2006, in a bid for political control over the ethnically mixed Governorates of Kirkuk, Diyala, Nineveh and Salah Al-Din, previous targets of Saddam Hussein’s ‘Arabisation’ policies, which were de facto controlled by Kurdish parties after the fall of the former regime.148 Members of religious and ethnic minorities, including Christians,149 Sabean Mandaeans,150 Yazidis,151 Jews,152 Turkmen and Kurds153 were targeted with discrimination, harassment, violence, murder, kidnappings, intimidation, threats and destruction of property for their perceived political alliances with the West or assumed wealth. In addition, any person not conforming to strict social mores and Islamic traditions, particularly women and sexual minorities,154 were attacked in the name of creating an Islamic state.

The levels of sectarian violence escalated rapidly after the bombing of the Shi’ah Al-Askariya shrine in Samarra on 22 February 2006 by Sunni Arab insurgents.155 In the context of this violence, the terrain on which these wars for sovereign control of the state were waged became a wasteland of human death and environmental decay. Rates of criminality increased,156 as criminal gangs began exercising violence alongside sectarian militias, destabilising both the militias’ and the occupation forces’ visions of sovereign statehood at the very moment that such visions were being asserted in similarly violent terms. This problem was reinforced by the lack of a well-functioning judicial or police system.157 In 2006, the rate of violence rose by 51% over the course of three months,158 with an estimated 5,000 deaths per month.159 People were hired to search dumps, river banks and morgues for the bodies of missing family members.160 Medical facilities struggled to cope with the influx of bodies and the lack of capacity in their morgues.161

---

145 Hashim, supra note 90, p. 74.
146 Mowle, supra note 86, p. 9.
147 UNHCR, supra note 65, p. 8.
150 UNHCR, supra note 65, p. 11.
152 US Department of State, supra note 149, Sec. 1.
154 UNHCR, supra note 94, pp. 191-195.
155 Ibid.
156 See UN Doc. S/PV.5583.
157 UNHCR, supra note 65, p. 2.
158 UN Doc. S/PV.5523.
159 UNSC, supra note 156.
In 2006, the John Hopkins Bloomberg School of Public Health reported that an estimated 655,000 Iraqis had died due to the consequences of the US invasion of the country – deaths referred to as ‘excess deaths’.162

Structural violence also persisted due to substandard basic services and high unemployment. The NGO Coordination Committee in Iraq determined that Iraq had fallen from the status of the most developed country in the region of the Middle East to that of a developing country.163 By 2007, 80% of the population lacked effective sanitation, 70% lacked access to adequate water,164 one-third lived in poverty,165 half lived on less than US$ 1 per day and half of the children of school age did not attend school.166

The consequences of this violence were further evident in the rates of forced displacement within Iraq and to neighbouring countries.167 Sectarian violence was spatially realised in territorial fragmentation and the seclusion of communities.168 The biopolitical ordering of new territories of control was evident in a map prepared by the US military in 2006, demarcating those areas within Iraq and to neighbouring countries.167 Sectarian violence was spatially realised in territories of control as ‘turning Sunni’ or ‘turning Shia’ as a result of the violence.169

This displacement was compounded by previous displacements resulting from Saddam Hussein’s violent campaigns.170 Nearly 4 million Iraqis remained displaced as of 2007,171 including 1.9 million internally displaced and 45,000 non-Iraqi refugees who previously had been harboured under Saddam Hussein’s regime. This figure increased as 40,000-50,000 Iraqis fled their homes each month.172 In Europe, North America and Asia, Iraqis constituted the largest group of asylum seekers, as their asylum applications increased from 12,500 in 2005 to 22,000 in 2006,173 and the UNHCR advised that all asylum seekers from south and central Iraq should be recognised as refugees.174

Nowhere did statistics, a key technology for the writing and quantification of life,175 demonstrate so persuasively its evolution into a tool for measuring death. As physical violence destroyed the social fabric of community, dignity, hope and normalcy,176 Iraqis were relegated to life as abject ‘others’, driven from the territories on which they made their homes and subjected to violence without recourse to protection and remedies of the law.

By the end of 2007, the US ‘surge’ of additional troops in Iraq was claimed a victory by the Bush administration, as the levels of violence began to decline. Civilian deaths resulting from

---

168 See Mbembe, supra note 106, pp. 28-30.
172 UNHCR, supra note 164, pp. 4-5.
174 UNHCR, supra note 73, p. 3; Addendum to UNHCR’s Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, December 2007, p. 7.
176 A. Bornstein, Crossing the Green Line between the West Bank and Israel, 2002, p. 15.
violence in 2008 fell 72%, estimated between 8,315 and 9,028. However, the reality of this victory was illusory given that other factors simultaneously lessened the violence. First, most of the neighbourhoods targeted by sectarian violence had by then been almost fully ‘cleansed’ by militias, and their once ethnically and religiously mixed composition had become homogenous, reconfiguring space in Iraq along sectarian lines. Second, in August 2007, Moqtada Al-Sadr demobilised his militia and eliminated many of its ‘rogue’ elements who were involved in the violence. Third, the tribal Awakening Councils created in Anbar, comprised largely of those Sunni militias which had turned against Al Qaeda and were then trained by the US, were beginning to be effective in fighting Al Qaeda, thus becoming another armed force outside the control of the Iraqi state. These intra-communal divisions within the Sunni insurgency made possible their increased integration into the state apparatus, although attacks against the state still continued long after the withdrawal of the majority of the US and UK forces from Iraq.

3. Reflections on sovereignty in the Iraq war

What were the implications of these practices of law and violence – justifications for the use of force, the installation of neoliberal democracy, militarisation in states of emergency and ethno-sectarian normativity – for how sovereignty was spatially configured and contested in the context of Iraq? This section considers how these practices detailed above both reified and challenged configurations of sovereignty in three kinds of spaces: the international order, the state of Iraq, and the human body as a site of territorialisation.

3.1. Expanding sovereign power within the international state system

The normative discourses, legal justifications, and installation of neoliberal governance by the US-led Coalition Forces were all technologies of power employed by the US in its attempt to assert its sovereign authority and Great Power positionality at a global level. The juridical recognition and protection of Iraq’s sovereignty was suspended unilaterally by the US and its allies in the project of protecting the international order, despite that international order’s initial refusal to recognise the lawfulness of the invasion. This location was marked by points in which both Iraq’s territory and social body existed somewhere between uncivilised and civilised, abandoned and protected, limiting the rights of sovereignty associated with the legal personality of the state and rendering bare the lives of the Iraqi population before the violence of an extended sovereign power.

Throughout its history Iraq had been repeatedly positioned in a state of legalised inequality within the international state system, from its inception as a British Mandate to the more recent sanctions and the first Gulf War. However, in the US-led Coalition Forces’ invasion of Iraq in
2003, which was largely recognised as an illegal war, despite the legal arguments employed to justify it, punishment within the confines of international law in the international state system evolved into banishment by a small coalition of sovereigns asserting their power extralegally and the lifting of the legal protections accorded to Iraq within the international state system altogether.

The neoconservative ideology of ensuring US hegemony through exporting liberal democracy in the Middle East was constructed in biopolitical terms, locating sovereign power in the life of populations and arguing that the security of populations in Iraq and the US and its allies would be maximised as a result of these interventions. Designating the Iraqi people as not fully politically qualified humans since they did not exist as democratic subjects, and the Iraqi state as not fully qualified as a legal personality due to its authoritarian regime, the US and its allies found justification to assert their sovereign authority beyond their borders and for Iraq’s sovereign boundaries to be compromised.

A new form of ‘Empire’,\textsuperscript{188} or a ‘legalised hegemony’ was revealed in these justifications,\textsuperscript{189} whose rationalities reflected previous incarnations of colonialism.\textsuperscript{190} Similar to earlier forms of racism in the colonies, the social rationality underpinning this imperial project regulated how protecting life and putting to death were distributed and made acceptable,\textsuperscript{191} and it determined who would benefit from the occupiers’ goals.\textsuperscript{192} This rationality, manifested in the designation of whole sectors of Iraqi society as inferior political subjects and based on claims of political immaturity of the Iraqi state,\textsuperscript{193} linked biopower, the state of exception and the state of siege,\textsuperscript{194} or occupation.

The life of the Iraqi people in effect was treated as a form of only partially qualified animal life, the killing of whom through invasion and counter-insurgency was rarely recognised by states as murder.\textsuperscript{195} Constructed as a state not organised in forms corresponding to the democratic civilised human world, Iraq emerged as a space in which the protection and guarantees of the legal order could be suspended, and violence was allowed to operate in the service of ‘liberating’ the other, reminiscent of previous projects of ‘civilisation’.\textsuperscript{196} Towards this end, the power to engage in warfare exceeded limitations imposed by the laws on the use of force; and the occupation and resulting insurgency led to an increasing militarisation and violent targeting of Iraqi society.

Following the invasion, once Iraqis began to undergo the process of ostensible democratisation through the installation of elected governments, they were partially lifted from this animal existence, and the exercise of violence without sanction in the initial invasion and destabilisation of the Iraqi state (constituting violence\textsuperscript{197}) then became legally constrained through the inculcation of some vision of the rule of law (law-maintaining or constituted violence). But, as Agamben noted, these two forms of violence are hardly distinct, and it is often difficult to establish the point at which the violence that constitutes the state becomes the legalised violence that main-

\textsuperscript{188} M. Hardt & A. Negri, Empire, 2000.
\textsuperscript{189} Simpson, supra note 25, pp. 322, 327, 334-337.
\textsuperscript{194} See Mbembe, supra note 106, p. 22.
\textsuperscript{196} See Mbembe, supra note 106, pp. 23-24.
tains the state, particularly given that law-maintaining violence includes within itself the possibility of its own exception in times of emergency, which is a form of constituting violence. The sovereign in this sense is he who occupies this point of indistinction between constituting and constituted violence. In the events following the invasion, these two forms of violence passed into one another, often becoming indistinguishable, as Iraqis were still subject to violent incursions by the Coalition Forces, the Iraqi state and non-state actors vying for sovereign and territorial control.

Therefore, the bodies-becoming-politically-qualified humans of Iraqi society undergoing the process of democratisation, but not fully arrived, were neither wholly protected nor wholly excluded by law. With the goal of establishing eventual self-rule, Iraqi civil society existed in the zone where law’s outside and inside merged, a zone also spatially expressed by both the designation of Iraq as an outlaw state and the prospect of its eventual re-inclusion (a territory-becoming-state with the full rights associated with its legal personality) into the ambit of international protection and recognition. In this blurring of the outside and the inside in the formation of the new Iraqi state, parallel to Agamben’s conceptualisation of the normalised state of exception in which law and its outside become indistinguishable, it became possible simultaneously to envision Iraq as eventually promoting nationalism and participatory politics and to use authoritarian and violent forms of social control to realise these aims.

Such categorical designations of states and bodies as outlaws, terrorists, or undemocratic, requiring domestication within the international state system, might serve as explanations for the Coalition Forces’ overreaching or extension of sovereign authority in their decision to invade and occupy Iraq. However, these explanations were also legal devices and normative discourses that facilitated decisions on the exception. The relegation of citizens to bare life by their sovereign state was extended to whole state populations, as outlaw states could now also be relegated to spaces of exception and the scope of the rights associated with their legal personalities truncated or altogether removed before an extended sovereign power expressed by Great Power states.

Such normative trends legitimising a legalised international hegemony occupy an uneasy place within the international legal order; although not formally or expressly recognised in international law, they may indicate how the law is attempting to encompass the exception within itself. Agamben pointed to the encompassing nature of law when it encounters human beings reduced to bare life in a state of emergency, as it attempts to embed spaces of exception or lawlessness within itself, often through rules of derogation (or in this case through new norms legalising hierarchical orders). He argued that the state of exception is actually a legal fiction used by the law to create those conditions of normalcy it requires for its own validity. The sovereign creates the exception to produce the normal situation required for its legitimate exercise of power and the recognition of its law. Therefore, the law both creates and legalises its own suspension, producing a zone of indifference in which the Hobbesian state of nature on the outside of law appears in its interior as a state of exception. Being neither fully internal nor external to the juridical order, the state of exception thus constitutes a zone of indifference in

---

198 Agamben, supra note 6, p. 41.
200 Agamben, supra note 6, pp. 32, 35.
201 See ibid., pp. 11, 41.
203 De Larrinaga, supra note 192, pp. 530, 532-534.
which the outside and inside merge and blur with one another, and where human beings remain abandoned by law’s protection, yet subject to its power – the ‘force of law’.205

The Coalition Forces in this sense then may have used the law to embed the exception within itself, legitimating their exceptional use of force against Iraq and its people through legal justifications and new norms of belonging and global citizenship. The conditions of exceptionality created by these new norms might also be considered the legal fictions necessary for the select few who dominate the hierarchical order of the international state system to define their position within the hierarchy as normal and legitimate.

However, given the increasingly violent consequences of the invasion, the asserted hierarchy of the international order that the exception was intended to define and legitimise emerged as a highly contested space as those who were relegated to the state of exception sought to assert their own norms and authority to define and control the state. Where the norm and the exception are repeatedly questioned, existing in a fraught relationship with one another, it becomes difficult to identify what constitutes the norm and what is the exception. Perhaps then the use of legalised exceptionalism to promote the normativity of extended sovereign authority became the source of its own undoing, as it succeeded more in revealing those spaces where the juridical order and the state of exception began to blur to the point of indistinction, and the asserted normality of the hierarchical international state system was revealed as an ideology and fiction of power.

3.2. Contesting sites of sovereign power within the state

Internally the sovereign power of the Coalition Forces and the Iraqi government was both contested and refracted throughout the state as it was appropriated and claimed by parties seeking to control the direction of the state formation process. This was realised through the increasing states of emergency and the rise of ethno-sectarian normativity during the occupation of Iraq. The demarcation of the parties to this contest was hardly clear, however, as some militias served as the armed wings of political parties represented in the new Iraqi government, blurring the line between state and non-state actors and revealing the multiple ways in which sovereignty is performed and how warfare is no longer the sole province of states.

Also, not simply acting illegally, the insurgents threatened to become laws unto themselves, commanding the admiration of their constituencies,206 and undermining the US and its allies’ visions of the new Iraqi state. They threatened to ‘overwhelm the law’ by challenging the very grounds which it requires for its foundation and adjudication, denying its legitimacy and reach,207 which provided the justification used by the MNF and ISF to banish them from legal protection and increase the use of force in quashing their popular power.208 The suspension of law and the use of force and banishment were attempts to restore and assert the US vision of political order when it became clear that its law could no longer check the ‘chaos’ threatening its grounds, and there was a threat that a new alternative law could be established by its opponents.209

The insurgents abandoned by the law were therefore in no way passive, but responded with the production of new and competing norms and identities. Laclau suggested as much in his critique of Agamben’s conception of law for its presentation as a unitary and sole force in

205 De Larrinaga, supra note 192.
206 See DeCaroli, supra note 7, pp. 57, 68; Laclau, supra note 8, pp. 11-22, pp. 32-33.
207 DeCaroli, supra note 7, p. 69.
208 See ibid., p. 58.
209 See ibid., pp. 64, 67.
determining the relationship of abandonment and presentation of sovereignty as ‘control by an over-powerful state’. Laclau argued that, in many instances, the person abandoned by ‘the law of the city’ is not necessarily abandoned by ‘any law’ (his emphasis). Rather, a position of exteriority within the space of exception from the city may provide the impetus to those abandoned to form a new collective identity in opposition to the law of the city or to the decision that excluded them, thereby producing two laws that do not recognise each other, rather than one law against lawlessness. This dynamic facilitates the continuous ‘re-negotiating and re-grounding of the social bond within a particular social space’. In such contexts, the politicisation of natural life does not automatically imply increasing control by an over-powerful state, but is rather the process of human life coming under various forms of human regulation. DeCaroli similarly asserts that individuals who challenge the very grounds of the political order often experience banishment from law’s protection precisely because they threaten to impose a new law in place of the old. Therefore, relegation to bare life in one space of exception might make way for the creation of a new form of qualified life through new forms of organisation that emerge in opposition to the political order that originally enacted the exception.

This conception of multiple laws that do not read one another is critical for understanding how sovereignty is not a sole overarching force, but rather is continuously asserted and contested through opposition, competing claims for political authority and repeated attempts to ground the social bond within particularly defined territories. This may account for how the fragmentation of political authority in Iraq and the rise of the insurgency led to fractured forms of sovereign power. However, rather than the possibilities for an emancipatory and oppositional politics that both Laclau and DeCaroli envisioned in the case of Iraq these multiple laws arising from multiple assertions of the right to exercise sovereign power within the state resulted not only in a contestation of the existing formal assertions of the sovereignty of the US-led MNF or the new Iraqi government, but also resulted in the multiplication of opportunities to decide upon the exception of individuals from their protection. In this process, the paradigm of sovereignty was entrenched even further as Iraqi citizens were excluded from law’s protection, not only by the extended sovereign authority of the US and its allied states, but also by the parties which competed for sovereign control that developed with the rise of the insurgency and sectarian violence. As militias formed their own political and legal orders in opposition to those imposed by the US in Iraq, they defined their own normative biopolitical parameters of identity and belonging and enacted their own decisions on the exception through violence, forced displacement and extermination.

3.3. The body as a site of territorialisation

The violent contests for sovereign authority in Iraq were waged on the bodies of its population, demonstrating how bodies became implicated in the process of territorialisation and the state formation process. As the transition to democracy failed to develop in accordance with US predictions, and insurgent militias and sectarian groups co-opted the fledgling democratic process to promote their own visions of Iraqi statehood and ethno-sectarian normativity, the violent side of sovereignty was exposed. In the face of political opposition to its occupation of Iraq, the US

210 Laclau, supra note 8.
211 Ibid.
212 Ibid., p. 18.
213 DeCaroli, supra note 7, pp. 57, 68.
214 Ibid., pp. 20-22. See also Murray, supra note 9, p. 134.
rhetoric of maximising the life of citizen bodies through the imposition of neoliberal democracy
devolved into a focus on strengthening the violent power of the new Iraqi state through the
eradication of those ‘anti-democratic’ elements within it. Simultaneously, militias’ visions for
who should constitute the new Iraqi social body devolved increasingly into violence against those
they believed should not. They created ‘death worlds’ in their internecine struggles for sovereign
authority and nationhood through violence against categorically determined others in Iraq, as the
meaning of being human became intertwined with the meaning of the state, and concepts of
justice began to hinge on the violent suppression of otherness.

The biopolitical consequences of the encounter between these expanded and fractured bids
for sovereign power multiplied as the management of the Iraqi population became predicated on
violent practices that were appropriated, reflected and reproduced in new forms by insurgent
militias, sectarian state actors and the Coalition Forces/MNF in this highly contested political
space. It was thus not a far step for Iraq, an exceptional space subjected to violent military
invasion and occupation with minimal risk or justification, to become a space where violence
emerged as the key vehicle for political expression and control. The biopolitical stakes of the
invasion and occupation with minimal risk or justification, to become a space where violence
risked becoming an end in itself. Foucault pointed to the critical role that violence plays
constituting a population, producing a citizen body, and asserting its need for protection, as the
sovereign power over death is a counterpart to the power that administers, regulates and optimises life. This was revealed in the war on terror, where life was reified into a material object
that had to be protected from fears of danger posed to society by individuals deemed to be
‘terrorists’, whose deaths were often the price of this security. Whereas war was once enacted
to defend the sovereign, it is now increasingly justified as a means of defending the biological
existence of the population. Violence is used against threatening bodies to defend the collective
body’s interests in managing and optimising its life, survival and racial identities. Police
become politics as the protection of life becomes dependent upon violence towards the enemy.
As Foucault wrote, ‘The power to expose a whole population to death is the underside of the
power to guarantee an individual’s continued existence’.

216 See Herring & Rangwala, supra note 53, pp. 186, 262.
223 Foucault, supra note 2, p. 137; see Dean, supra note 221, p. 18.
224 Agamben, supra note 6, p. 147.
225 Foucault, supra note 2, p. 137.
Along similar lines, Lefebvre noted that sovereignty implies a space constituted by violence, as states are born of violence, and their power can only endure through violence directed towards a particular space. The violence that founds the state operates along new lines of deployment to ensure the state’s continued existence.

However, when violence deployed along these lines is transformed into the primary technique for managing a population, the state of exception can become normalised, making the emergency difficult to distinguish from the normal order. Agamben noted that at this point of convergence between the exception and the normal political order, the dialectic between the violence that creates law and the violence that preserves it is broken. The sovereign resorts increasingly to violence, making bare life the primary ordering principle of the state.

This phenomenon was revealed in both the counter-insurgency operations and the battles between ethno-sectarian groups in Iraq, where violence was carried out with impunity in the name of emergency, becoming not only the key means of managing the population, but also an end in itself. However, the trajectories of this violence and the rationalities that undergirded its justification differed. In the case of the counter-insurgency operations, the intent was to eliminate the predominantly Sunni insurgency in order to promote a liberal democracy in which Sunni participation could be incorporated according to the rule of law. Violence in this sense was performative of a particular democratic political identity. However, the many setbacks and compromises that occurred in these counter-insurgency operations fueled the escalating violence and created spaces of ambiguity and ambivalence that undermined this liberal vision. For example, in the wide latitude given to US forces to kill ‘military-age males’ in counter-insurgency operations, such as in Operation Triangle at Lake Thar-Thar in 2006, the line between the combatant and the civilian was blurred, and an anomic space emerged in which decisions were enacted on the political values ascribed to life itself.

In the wake of this increasing militarisation in the state of emergency posed by the insurgency and counter-insurgency operations in Iraq, the extended sovereignty of the MNF operating in concert with the sovereign authority of the new Iraqi state were expressed in the exercise of power external to the law, as ‘peace’ became ‘more likely to take on the face of a “war without end”’, and war became increasingly the foundation of the political itself. In similar contexts, Agamben noted that when security emerges as the key criterion of political legitimacy, the state is at risk of being provoked by terror to become itself terroristic. When politics become reduced to the police, the difference between the state and the terrorist begins to blur, and a system emerges in which security and terrorism become dependent upon one another, providing justification for each other’s actions, and the decision on the exception produces the state of emergency. The subject of the state becomes both perpetrator and victim.
When the US employed heavy-handed violence to counter insurgents in Iraq, resulting in thousands of civilian deaths, it subverted its own programme of cracking down on terror,237 by itself become terroristic, its biopolitical goals of security turning on practices of unmitigated violence. As Diken and Laustsen have noted, this dynamic can open the space for tightened controls that foreclosed politics and dissent, merging the logics of terror and state power and inciting new forms of terror and violence.238 Žižek similarly observed that through the suspension of state sovereign rights of control in counter-insurgency operations, the Coalition Forces avoided the real emergency or ‘chaos’ of the politicisation of the citizen body, particularly one prone to popular unrest,239 nowhere more pronounced in Iraq than amongst many of the Sunni population who were marginalised after the fall of Saddam Hussein.

In the case of ethno-sectarian violence, the extermination of categorically determined others became part of a different project of state building in accordance with assertions of specific national identities. Violence in this context was performative of national identity, and national identity became premised on rationalities of extermination. In this sense, the ethno-sectarian violence might be characterised not only as biopolitical, in which violence is implicated in the protection of the citizenry and production of the citizen body, but also necropolitical,240 in which the decision on the exception is transformed into a decision upon the political relevance and value of life.241

More than two years after the invasion, faced with an overwhelming expansion of sovereign power beyond the state and the institutionalisation of a new political order in Iraq, many sectarian groups attempted to recover their autonomy and assert their authority through violent drives to integrate their definition of population and nation.242 They asserted their ethnic and sectarian identities through the expulsion and extermination of those designated as foreign to the territory or the nation,243 and they instrumentalised the four million persons forcibly displaced in the state-building process as objectives rather than byproducts of the conflict – what Helton would call ‘displacement by design’.244 They dialectically constructed their identities through ‘boundary maintenance’ against other identities,245 acting as ‘ethnopolitical entrepreneurs’ performing and invoking ethnic and sectarian identities in order to mobilise, justify and ultimately reify them and to inform and legitimise their politics.246

Towards such ends, sectarian militias forged new normative orders based upon biopolitical categories of the population, such as Shi’ah, Sunnis, Christians, Yazidis, Sabean Mandaeans and Kurds,247 thereby making the decision on bare life their primary political principle.248 The biopolitical body displaced the political adversary as the threat against the political order;249 it emerged as the new political subject and object – the site of the sovereign decision by those

---

237 See Žižek, supra note 107.
239 See Žižek, supra note 107.
240 Mbembe, supra note 106.
242 See Connolly, supra note 143, p. 37.
244 See A. Helton, The Price of Indifference, 2002, pp. 11, 36, 42.
245 Barth, supra note 243.
246 See UNSC, supra note 85.
247 UNHCR, Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, August 2007, p. 9; Hashim, supra note 90, p. 56.
248 See Agamben, supra note 6, p. 10.
249 Diken & Laustsen, supra note 46, p. 450.
asserting and competing for sovereign control. It revealed the merging of fact and law, where the production of categorical others was both the result and the application of the rule premising specific sectarian identities over others. 250 It demonstrated the catastrophic consequences of attempting to force a particular political identity to coincide fully with human life. 251 Militias spatially determined these categories through immobilisation, elimination and forcible displacement, and massacre emerged as the primary site of bodily and territorial control. 252

Such violence resulted in a system of ‘overlapping and fragile sovereignties’, in which sectarian militias appropriated property owned by the forcibly displaced for their own supporters and legitimised their newly defined geographical and sectarian communities both through their bodily presence on the land and their demonstrated capacity for violence, 253 a means of citizens exerting extra-legal control over territory. 254 This created a ‘patchwork of overlapping and incomplete rights to rule’, 255 which blurred distinctions between combatants and civilians and state and non-state actors, particularly as some armed groups were linked in different ways to the state, while others were not, but maintained effective control over particular territories. The ongoing threat of collective violence was therefore a way of ‘performing community’ – a strategy for promoting their partial sovereignty that allowed them to live on the land despite the illegality of their occupation, reinforcing both psychological and geographic borders of territories within Iraq. 256

Sectarian violence was in this sense not an age-old violence between ethnic groups, 257 particularly as the scope and meaning of sectarian and ethnic groups in Iraq changed significantly over time and were used in politically opportunistic ways by its different governing regimes. 258 Rather, violence was instrumental in producing, crystallising and polarising sectarian identities and mobilising certain political aspirations. This violence was framed and constituted as sectarian by the perpetrators, victims, journalists, politicians and international organisations, 259 and was undergirded by political pundits’ earlier calls for the dissolution of Iraq along ethnic and sectarian lines. 260

In several instances, this violence was presented as the logical outcome of the original schism over the succession to the Prophet Mohammed. Sectarian violence was often characterised as the continuation of an age-old conflict between Shi’ah and Sunni Muslims. It was detached from its roots in political manipulation by the US, new state actors within Iraq and the rise of an insurgency from those marginalised in the state-building process. This imagination of sectarian violence was further entrenched by statements that it persisted despite government efforts at prioritising reconciliation, 261 rather than the recognition that it was largely produced by opposition politics to foreign occupation and governance projects that marginalised certain groups. This characterisation, understating the exigencies, ambiguities and ethically and legally

---

250 Agamben, supra note 6, pp. 171, 174.
252 Mbembe, supra note 106, pp. 30-34.
255 Mbembe, supra note 106, pp. 30-34.
256 See Stepputat, supra note 25, p. 356; Landau & Monson, supra note 254, pp. 322-323.
257 See Brubaker, supra note 84, p. 9.
259 Brubaker, supra note 84, pp. 9-11, 14, 16-17.
260 UN Doc. S/PV.5033.
261 See for example UNHCR, supra note 247, pp. 23, 47-54.
questionable policies that both led to the invasion of Iraq and the post-war state-building process functioned to make war more palatable to the perpetrators both internally and externally. In this process, the body remained a silent, unquestioned site of territorialisation, accepted as the space upon which historical contests for sovereign power have always been waged.

4. Conclusion

Normative discourses and legal justifications for the war in Iraq, the instillation of neoliberal governance, militarisation in a state of emergency, and ethno-sectarian normativities were all practices of sovereign exceptionalism, violently enacted on the bodies of the Iraqi population and resulting in one of the largest refugee crises the Middle East has ever known. Such practices facilitated the spatiotemporal manifestations of the states of exception that proliferated within Iraq, as the US and the UK unilaterally designated Iraq as the exception within the global order, and sectarian militias reproduced structures of sovereignty and decisions upon life and death in their competition for control of the state. At the same time, these practices also enabled differing contestations of sovereign power, as the US and its allies’ positioning as Great Power states were challenged by characterisations of their invasion of Iraq as illegal, and insurgent and sectarian militias challenged not only the occupying forces, but also each other’s claims for sovereign authority.

Similar to Iraq’s creation as a state under British tutelage, the events leading to the 2003 invasion were intended to preserve the global order through first its outlaw status and then its domestication (through military intervention, occupation and state-building) to enable its eventual re-inclusion in international society, despite the initial rejection of such rationalities as illegal. However, following the invasion, the US was compelled to engage in a long project of state-building and reconstruction, during which its expanded sovereign power, expressed through occupation, encountered a population divided by competing claims for authority in the new Iraqi state. Claims to sovereign power therefore were not limited to recognised state authorities, but were refracted throughout the population in the emergence of militia groups and sectarian control of different government sectors. Sovereignty, originally expressed in the nexus of citizen/state/territory, became de-localised, internationally expanded and internally fractured across geographic territories and populations in Iraq.

These assertions and contestations of sovereignty in Iraq intersected with often deadly consequences. They located and entrenched statism ever more squarely within the realm of biopolitics, as the power to except bodies from legal protection was multiplied by those actors which made claims for sovereign control of the state. The struggle for control of the state was carried out on a biopolitical terrain: the justifications for invasion and physical and structural violence that resulted, the sectarianisation of government apportioned according to ethno-sectarian identities, social categorisation and retributive violence enabled the proliferation of new legal norms and political identities that demarcated the new Iraqi state on the bodies of its population. These practices demonstrated how the violent underside of biopolitics became central to the assertion of such sovereign identities, as escalating violence emerged in a tenuous relationship with the biopolitical projects of democratic government.

As the power of sovereign decisionism was revealed in the increased use of unconstrained brute force and contested and appropriated by insurgents and sectarian militias, the state began to lose the grounding in law necessary for its legitimacy. The normalisation of the exception began to undermine both the legitimacy of the MNF and the insurgents’ respective assertions of sovereign control and visions for the Iraqi state, perhaps nowhere more evident than in the final
withdrawal of US combat forces in August 2010 despite the stalemate between factions of the current Iraqi government and the ongoing insurgency that could potentially instigate new incarnations of civil war.

Therefore, all inhabitants of Iraq became subject to the violence of sovereign politics, not only reduced to fighting for their survival in spaces unprotected by law, but also asserting new legal norms and political orders to govern these spaces and to challenge the decisions that placed them there. However, these assertions of political authority and rights to sovereign control multiplied the production of spaces of exception, as exceptional spaces gave way to normative orders enacting further exceptions. In staking their claims for sovereign authority, private and state actors employed increasingly violent measures and rationalities for asserting their visions of who would constitute and control the new Iraqi state. While they did not contest the paradigm of sovereign power, they did challenge each other’s claims for sovereign control. They undermined and destabilised assertions of sovereignty at the state level, but reproduced sovereignty in their desires to control the direction of the Iraqi state.

Hence the state of exception emerged as a dominant paradigm of governance in Iraq, turning ever more on the violent underside of biopolitics and producing continuous outflows of refugees. As the exception increasingly became the norm, the violence that constituted the state began to merge with the violence that maintained it, disintegrating the distinctions between life and politics, fact and law. The normalcy that sovereign law required for its own validity was therefore rendered almost as meaningless as it had been under Saddam Hussein, as sovereignty was revealed as both contingent and processual, and delocalised and decentred in this highly contested political space.