

This article is published in a peer-reviewed section of the Utrecht Law Review

‘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, London (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 explication 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.² 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'.³

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, relegating 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.⁴ 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.⁵ Sovereignty is this power that defines both the law and those situations in which law no longer holds.⁶

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,⁷ producing two laws that do not read each other,⁸ and creating possibilities for the emergence of an emancipatory politics.⁹

2 M. Foucault, *The history of sexuality: an introduction* (R. Hurley, Trans.), 1978, pp. 139-140, p. 143.

3 A. Norris, 'The Exemplary Exception – Philosophical and Political Decisions in Giorgio Agamben's *Homo Sacer*', in A. Norris (ed.), *Politics, Metaphysics, and Death – Essays on Giorgio Agamben's Homo Sacer*, 2005, pp. 262-283, p. 268.

4 G. Agamben, *State of Exception*, 2005.

5 S. Perera, 'What is a Camp...?', 2002 *Borderlands* 1, no. 1, pp. 175, 187.

6 G. Agamben, *Homo Sacer – Sovereign Power and Bare Life*, 1998, pp. 6-7, 28-29, drawing upon C. Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, 1985, p. 5.

7 S. DeCaroli, 'Boundary Stones – Giorgio Agamben and the Field of Sovereignty', in M. Calarco & S. DeCaroli (eds.), *Giorgio Agamben: Sovereignty and Life*, 2007, pp. 43-69, p. 46.

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.¹⁰ It is critical to examine what practices enable sovereign power to function and maintain the legitimacy of the connection between territory and authority,¹¹ 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.¹² Foucault similarly proposed that is necessary to map the spaces that expose how power and knowledge function to produce the present,¹³ how categories of inclusion and exclusion are ultimately spatial relationships and ‘geometries of negativity’.¹⁴ 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.¹⁵ 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.

10 D. Kennedy, ‘The mystery of global governance’, Kormendy Lecture presented at Ohio Northern University, Pettit College of Law, 25 January 2008, pp. 6, 23.

11 Ibid., p. 48.

12 P. Hubbard et al. (eds.), ‘Bruno Latour’, in *Key Thinkers on Space and Place*, 2004, pp. 202-207, p. 205. See also *ibid.*, ‘Editors’ Introduction’, pp. 9-10.

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.

15 S. Elden, *Mapping the Present: Heidegger, Foucault and the Project of a Spatial History*, 2001, pp. 94-95.

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',¹⁶ recalled the earlier designation of Iraq as a 'rogue state' and named Iraq as part of the 'axis of evil'.¹⁷ 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'.¹⁸

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,¹⁹ thereby asserting its power as a 'world sovereign'.²⁰ This expression of expanded sovereign power was the most recent iteration of similar positions adopted in the 1992 Defense Planning Guidance paper,²¹ the neoconservative 1997 Project for the New American Century paper *Rebuilding America's Defenses*,²² the 1998 Iraq Liberation Act,²³ and the 2002 US National Security Strategy.²⁴

Such rhetoric also may have indicated a retreat to an earlier State system dominated by discourses of 'civilisation' and 'barbarism',²⁵ 'the (relative) prosperity and peace of the "civilised" West (...) bought by exporting ruthless violence and destruction to this "barbarian" Outside'.²⁶ 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.²⁷ 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

16 Office of the Press Secretary, US White House, 'President Delivers State of the Union Address', 29 January 2002.

17 Ibid.

18 G.W. Bush, 'Remarks at the United Nations General Assembly, New York', 12 September 2001.

19 S. Zunes, 'The US Obsession with Iraq and the Triumph of Militarism', in T. Ismael & W. Haddad (eds.), *Iraq – The Human Cost of History*, 2004, pp. 167-215, pp. 173, 175, 183.

20 See D. Gregory, 'The Black Flag: Guantánamo Bay and the Space of the Exception', 2006 *Geographical Analysis* 88B, no. 4, pp. 405-427, p. 410.

21 P. Wolfowitz, *Defense Planning Guidance*, US Department of Defense, 1992.

22 Project for the New American Century, *Rebuilding America's Defenses – Strategy, Forces and Resources for a New Century*, September 2000, pp. 14, 17.

23 Iraq Liberation Act of 1998 (1998, October 31). H.R. 4655, Public Law 105-388, 105th United States Congress.

24 US White House, *The National Security Strategy of the United States of America*, September 2002.

25 J. Ralph, 'Extraordinary Rendition and the Retreat of International Society since 9/11', paper presented at *Detention and Rendition in the War on Terror conference*, LSE Department of International Relations, London, 6 May 2009; see G. Simpson, *Great Powers, Outlaw States: Unequal Sovereigns in the International Order*, 2004, p. 34; S. Pickering, 'Crimes of the State – The Persecution and Protection of Refugees', 2005 *Critical Criminology* 13, pp. 141-163, p. 155; F. Stepputat, 'Forced Migration, Land, and Sovereignty', 2008 *Government and Opposition* 43, no. 2, pp. 337-357, p. 340.

26 S. Žižek, *The Universal Exception*, 2006, p. 274.

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 founded 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

28 Ibid., pp. 5, 21-22. See H. Charlesworth & C. Chinkin, ‘Regulatory Frameworks in International Law’, in C. Parker et al. (eds.), *Regulating Law*, 2004, pp. 246-268, p. 264.

29 J. Hallenberg & H. Karlsson, *The Iraq War – European Perspectives on Politics, Strategy and Operations*, 2005, p. 234; see Zunes, supra note 19, p. 168; see Butler Commission, *Review of Intelligence on Weapons of Mass Destruction – Report of a Committee of Privy Counsellors*, UK House of Commons, HC 898, 14 July 2004; US Senate, *Senate Report on the US Intelligence Community’s Pre-War Intelligence Assessments on Iraq*, 7 July 2004.

30 See R. Scheer, ‘President Bush’s Wag-the-Dog Policy on Iraq’, *Los Angeles Times*, 7 May 2002.

31 K. Katzman, ‘U.S. Policy’, in R. Copson (ed.), *The Iraq War – Background and Issues*, excerpted from CRS Report RL31715, 2003, p. 10.

32 See the ‘Downing Street Memo’: UK Prime Minister, *Iraq – Prime Minister’s Meeting*, 23 July 2002.

33 US Congress, *Authorisation for the Use of Military Force Against Iraq*, Resolution of 2002, 107th US Congress, 10 October 2002.

34 UN Doc. S/2002/1441.

35 See P. Sands, *Lawless World – America and the Making and Breaking of Global Rules from FDR’s Atlantic Charter to George W. Bush’s Illegal War*, 2005, pp. 185-186.

36 See US White House, supra note 24, p. 15; *Report in Connection with Presidential Determination under Public Law 107-243*, H. Doc. 50, 108th US Congress, 1st Session, 19 March 2003.

37 See UK Attorney General Lord Goldsmith, *Statement by the Attorney General, Lord Goldsmith, in Answer to a Parliamentary Question*, 17 March 2003.

38 Sands, supra note 35, p. 187.

39 UK Attorney General Lord Goldsmith, *Iraq – Resolution 1441* (Note to the Prime Minister), 7 March 2003; UK Attorney General Lord Goldsmith, supra note 37.

40 R. Wedgwood, ‘The Fall of Saddam Hussein – Security Council Mandates and Pre-Emptive Self-Defense’, 2003 *American Journal of International Law* 97, no. 3, pp. 576-585; C. Greenwood, *The Legality of Using Force Against Iraq*, Select Committee on Foreign Affairs, 21 March 2005.

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

41 W. Cleveland, *A History of the Modern Middle East*, 2004, pp. 545, 547.

42 UN Doc. S/PV.4914.

43 See A. Conte, *Security in the 21st Century: The United Nations, Afghanistan and Iraq*, 2005, pp. 102, 112-113, 144-146; P. Shiner, 'The Iraq War, International Law and the Search for Accountability', in P. Shiner & A. Williams (eds.), *The Iraq war and International Law*, 2008, pp. 17-54; P. McLain, 'Settling the Score with Saddam: Resolution 1441 and Parallel Justifications for the Use of Force against Iraq', 2003 *Duke Journal of Comparative and International Law* 13, pp. 233-291, p. 268.; O. Bring & P. Broström, 'The Iraq War and International Law – From Hugo Grotius to George W. Bush', in Hallenberg & Karlsson, supra note 29.

44 See A. Bartholemew (ed.), *Empire's Law*, 2006.

45 A. Williams, 'The Iraq War and International Law – By Way of an Introduction', in Shiner & Williams, supra note 43, pp. 8-9.

46 B. Diken & C. Laustsen, 'The Camp', 2006 *Geographical Analysis* 88B, no. 4, pp. 443-452, p. 450.

47 UN Doc. S/2003/1483.

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.

51 BBC, 'Iraq War Illegal, Says Annan', 16 September 2004.

52 See Cheney's speech: US White House, 'Vice President Speaks at the VFW 103rd National Convention', 26 August 2002.

53 E. Herring & G. Rangwala, *Iraq in Fragments – The Occupation and its Legacy*, 2006, p. 10.

54 D.J. Feith, *The Future of Iraq*, Senate Hearing 108-43, Senate Committee on Foreign Relations, 20 January 2003, pp. 20-21, 23-24; M. Bhatia, 'Postconflict Profit – The Political Economy of Intervention', 2005 *Global Governance* 11, pp. 205-224, p. 219.

allied 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 ORHA 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.

59 J. Harding, *After Iraq – War, Imperialism and Democracy*, 2004, pp. 161-162.

60 A. Beattie, 'Iraq to Lift Curbs on Investment', *Financial Post*, 22 September 2003; Herring & Rangwala, *supra* note 53, p. 17.

61 Bhatia, *supra* note 54, p. 219.

62 Harding, *supra* note 59, p. 142.

63 Coalition Provisional Authority (CPA), *De-Ba'athification of Iraqi Society* (Order No. 1), 16 May 2003; P. Bremer, *US Department of Defense News Briefing*, 12 June 2003.

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.

66 Harding, *supra* note 59, p. 161.

67 See 2008 Justice and Accountability Law. R. Malley, *Iraq and the Surge*, Testimony by Robert Malley, Middle East and North Africa Program Director, International Crisis Group, to the Senate Armed Services Committee, 9 April 2008.

68 Simpson, *supra* note 25, p. 78. See M. Foucault, *Discipline and Punish – The Birth of the Prison*, 1979.

69 Harding, *supra* note 59, p. 161.

70 CPA, *An Historic Review of CPA Accomplishments*, 2004, p. 27.

71 UN Doc. S/PV.4944.

72 UNHCR, *UNHCR Return Advisory Regarding Iraqi Asylum Seekers and Refugees*, September 2004.

73 UNHCR, *UNHCR Return Advisory and Position on International Protection Needs of Iraqis Outside Iraq*, 18 December 2006, p. 2.

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.

75 See Covenant of the League of Nations, The Treaty of Versailles (Part I) (adopted 28 June 1919, entered into force 10 January 1920) 225 CTS 288.

76 UNSC, *supra* note 47.

77 Herring & Rangwala, *supra* note 53, pp. 57-59, 94, 161, 207, 260-261, 265-266, 269.

78 UN Doc. S/RES/1500, Para. 1.

79 International Crisis Group, *Governing Iraq*, 25 August 2003, pp. 10-12, App. B.

80 Herring & Rangwala, *supra* note 53, pp. 21-22, 87-88, 97, 107-108, 159.

81 UN Doc. S/RES/1546, Paras. 1-2.

82 UN Doc. S/PV.5099.

83 See UN Doc. S/PV.5161.

84 UN Doc. S/RES/1637. See R. Brubaker, *Ethnicity Without Groups*, 2004, p. 20.

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.⁸⁶

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,⁸⁷ 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,⁸⁸ 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,⁸⁹ 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.⁹⁰ 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,⁹¹ including international aid and UN agencies, foreign contractors,⁹² intellectuals,⁹³ medical professionals,⁹⁴ journalists,⁹⁵ lawyers and judges,⁹⁶ athletes,⁹⁷ artists and singers,⁹⁸ the police, politicians and government officials.⁹⁹

The rise of the insurgency signaled the prospect of prolonged military occupation in the country,¹⁰⁰ 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.

86 T. Mowle (ed.), *Hope is Not a Plan – The War in Iraq from Inside the Green Zone*, 2007, p. 9.

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.

91 UN Assistance Mission in Iraq (UNAMI) Human Rights Office, *Human Rights Report, 1 January – 31 March 2007*, p. 6.

92 UNAMI, *Iraq Media Monitoring*, 10 March 2005.

93 B. O'Malley, *Education Under Attack*, 27 April 2007.

94 UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, April 2009, pp. 168-169.

95 Committee to Protect Journalists, 'For Sixth Straight Year, Iraq Deadliest Nation for Press', 18 December 2008.

96 M. Tawfeeq, 'Iraqi Judges Targets of Bombing Attacks', *CNN*, 30 June 2008.

97 UNHCR, *supra* note 94, p. 184.

98 A. Sarhan & C. Davies, 'Iraqi Artists and Singers Flee Amid Crackdown on Forbidden Culture', *The Observer*, 11 May 2008.

99 UNHCR, *supra* note 65, pp. 14, 32.

100 S. Bowman, 'Military Issues', in Copson, *supra* note 31, p. 19.

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'.¹⁰¹ 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,¹⁰² and then, in 2004, attacking the Mahdi Army,¹⁰³ and Falluja.¹⁰⁴

By referring to the insurgents as 'terrorists',¹⁰⁵ the Coalition Forces constructed distinctions between authentic and enemy expressions of sovereignty.¹⁰⁶ They excluded those marked as terrorist from any positive legal status,¹⁰⁷ 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.¹⁰⁸

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.¹⁰⁹ Iraq Body Count estimated that of the 800 deaths following this operation, 572 were civilians,¹¹⁰ a death toll that the IGC deemed both 'illegal and totally unacceptable'.¹¹¹ After the second operation in November, 80% of the city's population was displaced,¹¹² and 1,200 were killed. Iraqi security forces deserted their posts in protest or to support the insurgency, decreasing the size of the forces by 82% in some parts of the region and reducing the police force by 99%.¹¹³

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.¹¹⁴ 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.¹¹⁵

Having little legitimacy amongst Iraqis who viewed the US occupation as the proximate cause of most killings in these insurgency and counter-insurgency operations,¹¹⁶ 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 2007,¹¹⁷ the

101 UN Doc. S/2003/1511; UN Secretary-General K. Annan, BBC, 23 September 2003.

102 J. Banusiewicz, 'AF Supports Operation Iron Hammer', *American Forces Press Service*, 12 November 2003; 'Army Launches "Ivy Cyclone II" to Target Insurgents', *American Forces Press Service*, 16 November 2003.

103 Harding, *supra* note 59, p. 115.

104 J. Salt, 'Falluja – Slaughter of a City', 2005 *Arena Magazine*, no. 77, pp. 30-32.

105 See UN Doc. S/PV.4984 for comments by Lakhdar Brahimi.

106 See A. Mbembe, 'Necropolitics' (L. Meintjes, Trans.), 2003 *Public Culture* 15, no. 1, pp. 11-40, p. 19.

107 See S. Žižek, 'Are We in a War? Do We Have an Enemy?', *London Review of Books*, 23 May 2002.

108 See Simpson, *supra* note 25, pp. 84, 86.

109 UNHCR, *supra* note 72.

110 Iraq Body Count, *No Longer Unknowable – Falluja's April Civilian Toll is 600*, 26 October 2004.

111 J. Steele, 'Shells and Rockets were Falling Like Rain', *Guardian*, 12 April 2004.

112 UNAMI Emergency Working Group, *Fallujah Bulletin Update*, 18 January 2005.

113 Herring & Rangwala, *supra* note 53, pp. 35, 197-199.

114 *Ibid.*, pp. 29-31, 35, 200-201, 208.

115 See V. Sanford, 'Contesting Displacement in Columbia – Citizenship and State Sovereignty at the Margins', in V. Das & D. Poole (eds.), *Anthropology in the Margins of the State*, 2004, pp. 253-278, p. 256.

116 IIACSS, *Public Opinion in Iraq*, May 2004, p. 39.

117 See UN Doc. S/PV.5639.

proliferation of private security firms and the strengthening of Iraqi security forces.¹¹⁸ 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.¹¹⁹ It was also reflected in the division created between the civilian CPA, staffed by less than 1,200 personnel,¹²⁰ 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 security, law enforcement and prisons – more than any other sector of reconstruction.¹²¹ By 2008, there were over 580,000 personnel in the Iraqi Security Forces alone,¹²² 1.3 times the size of the disproportionately large military under Saddam Hussein.¹²³

The US and the British forces, often in conjunction with Iraqi Security Forces (ISF) and paramilitaries, employed violent tactics against perceived insurgents with a high level of impunity,¹²⁴ as policing came to represent the convergence of the violence that makes law and the violence that preserves it.¹²⁵ The CPA established the Central Criminal Court of Iraq to prosecute cases related to terrorism,¹²⁶ but there were reports of defendants detained without due process and subjected to torture,¹²⁷ practices which continued despite Iraq's ratification of the Convention Against Torture in 2008 and the creation of the Independent High Commission for Human Rights in accordance with the Iraqi Constitution (Article 102).¹²⁸

On 6 July 2004, the IIG authorised the Order for Safeguarding National Security, a state of emergency law containing some provisions for safeguarding citizens.¹²⁹ However, despite declarations of states of emergency,¹³⁰ most arrests were made under the auspices of the MNF and therefore were not constrained by such legislation.¹³¹ Hence, many Iraqis were detained by the MNF and Iraqi Security Forces (ISF) without due process of law in Iraqi courts.¹³² Their detentions did not fall within the ambit of state penal law, but were carried out under an ambiguous form of martial law.¹³³ 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.4971.

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.

123 See US State Department, *Weekly Report*, 25 January 2006, pp. 7, 24; A. Cordesman, *Iraqi Armed Forces on the Edge of War*, CSIS, 7 February 2003, pp. 1, 37.

124 UK Home Office, *Operational Guidance Note: Iraq*, October 2008; see UNAMI, *Human Rights Report 1 January – 30 June 2009*, pp. 12-13.

125 See B. Gulli, 'The Ontology and Politics of Exception – Reflections on the Work of Giorgio Agamben', in Calarco & DeCaroli, supra note 7, pp. 219-242, p. 235.

126 Coalition Provisional Authority, *The Central Criminal Court of Iraq* (Order no. 13, revised, amended), 22 April 2004.

127 US Department of State, *Country Report on Human Rights Practices 2008, Iraq*, February 2009, p. 6; UNAMI, supra note 124, p. 4.

128 US Department of Defense, *Measuring Stability and Security in Iraq*, Report to Congress in Accordance with the Department of Defense Appropriations Act 2007 (Section 9010, Public Law 109-289), 15 March 2009, p. 5; UN, *Iraq: UN Official Welcomes Creation of Human Rights Commission*, 17 November 2008.

129 Iraqi Interim Government, *Order for Safeguarding National Security* (Order 1 of 2004), 6 July 2004. See US Department of State, supra note 127, s. d.

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,¹³⁴ the most public being the spectacle of inhuman and degrading treatment perpetrated by US military forces at the Abu Ghraib prison.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 2007.¹³⁶ 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,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 7,000.¹³⁸

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,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,¹⁴⁰ even imposing the death penalty in some cases based on confessions gained from torture.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.¹⁴²

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.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 instill 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

134 UNAMI Human Rights Office, *Human Rights Report 1 April – 30 June 2007*, pp. 8-9.

135 See B. Diken & C. Laustsen, 'Zones of Indistinction – Security, Terror, and Bare Life', Department of Sociology, Lancaster University, 2003, <<http://www.lancs.ac.uk/fass/sociology/papers/diken-laustsen-zones-of-indistinction.pdf>>, pp. 1-14, p. 6.

136 M. Tran, 'US Security Firm Blackwater Faces Expulsion from Iraq', *The Guardian*, 29 January 2009.

137 US Senate Armed Services Committee, *National Defense Authorisation Act for Fiscal Year 2005 Report*, Senate Report 108-260, 108th US Congress, May 2004, Sec. 864.

138 E. MacAskill, 'US Officials Face Uphill Task without Troops', *The Guardian*, 20 August 2010.

139 See Herring & Rangwala, *supra* note 53, p. 264.

140 UNAMI, *supra* note 91, p. 14.

141 UN, *Special Rapporteur on the Independence of Judges and Lawyers Calls for Halt in Application of Death Penalty in Iraq*, 19 June 2007.

142 UN Doc. S/PV.5386.

143 See W. Connolly, 'The Complexity of Sovereignty', in Calarco & DeCaroli, *supra* note 7, pp. 23-42, p. 42.

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 Turkmen in 2006, in a bid for political control over the ethnically mixed Governorates of Kirkuk, Diyala, Ninewa 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 Sabeen 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

144 B. Adas, ‘Basra Police Chief “Ready to Deal with Armed Militias”’, *Gulf News*, 7 October 2007.

145 Hashim, *supra* note 90, p. 74.

146 Mowle, *supra* note 86, p. 9.

147 UNHCR, *supra* note 65, p. 8.

148 Global Security, *Christians in Iraq*, 22 June 2005.

149 UNHCR, *Background Information on the Situation of Non-Muslim Religious Minorities in Iraq*, October 2005, pp. 2-4; US Department of State, *International Religious Freedom Report 2007 – Iraq*, 14 September 2007.

150 UNHCR, *supra* note 65, p. 11.

151 S. Maisel, ‘Social Change amidst Terror and Discrimination – Yazidis in the New Iraq’, The Middle East Institute, Policy Brief No. 18, 18 August 2008.

152 US Department of State, *supra* note 149, Sec. 1.

153 Institute for War and Peace Reporting, ‘Kurds Find Northern Resettlement Tough’, *Iraqi Crisis Report*, no. 90, 15 November 2004; UNHCR, *supra* note 65, p. 14.

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.

160 A. Al-Khalidi & V. Tanner, ‘Iraq Bleeds – The Remorseless Rise of Violence and Displacement’, 2007 *Forced Migration Review*, June, pp. 6-9, p. 9.

161 R. Zimmerman, ‘Responding to Iraq’s Ever-Deepening Violence’, 2007 *Forced Migration Review*, June, pp. 29-31, p. 30.

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 of Baghdad whose ethno-sectarian composition was '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

162 G. Burnham et al., 'Mortality After the 2003 Invasion of Iraq – A Cross-Sectional Cluster Sample Survey', *The Lancet*, 11 October 2006.

163 M. Chulov, 'The New Iraq – The Bombing Goes On, But the Building has Begun', *The Guardian*, 23 December 2008.

164 UNHCR, *Humanitarian Needs of Persons Displaced within Iraq and Across the Country's Borders – An International Response*, (HCR/ICI/2007/2), 30 March 2007, p. 6; Oxfam International, 'Rising to the Humanitarian Challenge in Iraq', Briefing Paper, July 2007.

165 W. Kälin, 'A Tragedy of Increasing Proportions – Internal Displacement in Iraq', *2007 Forced Migration Review*, June, pp. 14-15, p. 14.

166 See L. Billing, 'Iraq's Children Pay the Price of War', *2007 Forced Migration Review*, June, pp. 42-43; UNAMI, *supra* note 124, p. 14.

167 N. Rosen, 'The Flight from Iraq', *The New York Times*, 13 May 2007.

168 See Mbembe, *supra* note 106, pp. 28-30.

169 See US Military, 'US Military's Classification of Baghdad's Ethno-Sectarian Divide' (Map), 2006, <<http://images.thetimes.co.uk/TGD/picture/0,,374645,00.jpg>> (last visited 21 February 2011). See also N. Parker & A. Hamdani, 'How Violence is Forging a Brutal Divide in Baghdad', *The Times*, 14 December 2006.

170 P. Medway, 'Insufficient World Focus on Iraqi IDPs', *2007 Forced Migration Review*, June, pp. 47-48, p. 47.

171 UN Cluster F, *Internally displaced persons in Iraq*, 23 May 2007.

172 UNHCR, *supra* note 164, pp. 4-5.

173 *Ibid.*, p. 5; J. Riera & A. Harper, 'Iraq – The Search for Solutions', *2007 Forced Migration Review*, June, pp. 10-13, p. 10.

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.

175 C.N. Seremetakis, 'In Search of the Barbarians – Borders in Pain', *1996 American Anthropologist* 98, no. 3, pp. 489-491, p. 490.

176 A. Bornstein, *Crossing the Green Line between the West Bank and Israel*, 2002, p. 15.

violence in 2008 fell 72%,¹⁷⁷ estimated between 8,315 and 9,028.¹⁷⁸ 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,¹⁷⁹ and their once ethnically and religiously mixed composition had become homogenous,¹⁸⁰ reconfiguring space in Iraq along sectarian lines.¹⁸¹ Second, in August 2007, Moqtada Al-Sadr demobilised his militia and eliminated many of its ‘rogue’ elements who were involved in the violence.¹⁸² 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,¹⁸³ were beginning to be effective in fighting Al Qaeda, thus becoming another armed force outside the control of the Iraqi state.¹⁸⁴ These intra-communal divisions within the Sunni insurgency made possible their increased integration into the state apparatus,¹⁸⁵ although attacks against the state still continued long after the withdrawal of the majority of the US and UK forces from Iraq.¹⁸⁶

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.¹⁸⁷ 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

177 US Department of State, *supra* note 127.

178 Iraq Body Count, *Post-Surge Violence – Its Extent and Nature*, 28 December 2008.

179 Z. Al Ali, *Presentation on Iraq*, UNHCR Beirut, 4 September 2009.

180 UNHCR, *supra* note 164, p. 6.

181 N. Parker, ‘Iraqi Civilian Deaths Plunge’, *Los Angeles Times*, 1 November 2007.

182 S. Raghavan, ‘Sadr Movement Seeks its Way as Others Gain Power in Iraq’, *The Washington Post*, 5 December 2008; BBC, ‘Iraq’s Sadr Extends Militia Truce’, 28 August 2008.

183 UNHCR, *supra* note 94, p. 86.

184 Hashim, *supra* note 90, p. 75.

185 See BBC, ‘Timeline – Iraq’, 31 December 2009.

186 BBC, ‘Iraq: Bomb Kills Police in Shia Shrine City of Samara’, 21 February 2011.

187 See Connolly, *supra* note 143, pp. 36-37.

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',¹⁸⁸ or a 'legalised hegemony' was revealed in these justifications,¹⁸⁹ whose rationalities reflected previous incarnations of colonialism.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,¹⁹¹ and it determined who would benefit from the occupiers' goals.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,¹⁹³ linked biopower, the state of exception and the state of siege,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.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'.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 violence¹⁹⁷) 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-

188 M. Hardt & A. Negri, *Empire*, 2000.

189 Simpson, *supra* note 25, pp. 322, 327, 334-337.

190 See R. Eaglestone, 'On Giorgio Agamben's Holocaust', 2002 *Paragraph: Journal of Modern Critical Theory* 25, no. 2, pp. 52-67.

191 See M. Foucault, *Il Faut Défendre la Société*, 1997, p. 228; P. Fitzpatrick, 'Gods Would be Needed... American Empire and the Rule of (International) Law', 2003 *Leiden Journal of International Law* 16, pp. 429-466, p. 448.

192 See M. De Larrinaga, 'Sovereign Power and the Biopolitics of Human Security', 2008 *Security Dialogue* 39, pp. 517-537, p. 520.

193 See D.T. Goldberg, *The Racial State*, 2002.

194 See Mbembe, *supra* note 106, p. 22.

195 H. Arendt, *The Origins of Totalitarianism*, 1966, p. 192.

196 See Mbembe, *supra* note 106, pp. 23-24.

197 See A. Haverkamp, 'Anagrammatics of Violence', in Norris, *supra* note 3, pp. 135-144, pp. 135, 139, citing W. Benjamin, 'Critique of Violence', in P. Demetz (ed.), *Reflections*, 1978, pp. 277-301.

tains the state,¹⁹⁸ 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.¹⁹⁹ The sovereign in this sense is he who occupies this point of indistinction between constituting and constituted violence.²⁰⁰ 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,²⁰¹ 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.²⁰²

Such categorical designations of states and bodies as outlaws, terrorists,²⁰³ 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.²⁰⁴ 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.

199 See L. de la Durantaye, *Giorgio Agamben – A Critical Introduction*, 2009, p. 339.

200 Agamben, *supra* note 6, pp. 32, 35.

201 See *ibid.*, pp. 11, 41.

202 E. Davis, *Memories of State – Politics, History, and Collective Identity in Modern Iraq*, 2005, pp. 44-45.

203 De Larrinaga, *supra* note 192, pp. 530, 532-534.

204 *Ibid.*, pp. 23, 36-37. See C. Schmitt, *The Nomos of the Earth in International Law of the Jus Publicum Europaeum*, 2003.

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).²¹⁰ 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’.²¹¹ 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.²¹² 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.²¹³ 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,²¹⁴ 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.²¹⁵ 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.

215 See J. Holder & C. Harrison (eds.), *Law and Geography*, 2003, p. 7.

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.²¹⁶ 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.²¹⁷

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.²¹⁸ The biopolitical stakes of the insurgency escalated over time as insurgent and counter-insurgency attacks caused more deaths after the war was officially ended than during the war itself,²¹⁹ and as the increasing use of aggressive-defensive violence by the occupying forces against the insurgents was appropriated by them in realising their own visions of law and political ordering.²²⁰

While enacted in the name of state formation and security, such normalised and escalating 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.²²¹ 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.²²² 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.²²³ Police become politics as the protection of life becomes dependent upon violence towards the enemy.²²⁴ 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'.²²⁵ 'For the first time in history (...), at once it becomes possible both to protect life and to authorise a holocaust'.²²⁶ This possibility of simultaneously protecting life and authorising death also marks that point at which the state defines its conditions of exceptionality from the law and 'enacts the human in biopolitical

216 See Herring & Rangwala, *supra* note 53, pp. 186, 262.

217 P.K. Rajaram & C. Grundy-Warr, 'Introduction', in P.K. Rajaram & C. Grundy-Warr (eds.), *Borderscapes: Hidden Geographies and Politics at Territory's Edge*, 2007, pp. xii-xiii.

218 Diken & Laustsen, *supra* note 135, p. 13.

219 M. O'Hanlon & A.L. de Albuquerque, *Iraq Index*, Brookings Institution, 21 June 2004, p. 3.

220 See C. Sylvester, 'Bare Life as a Development/Postcolonial Problematic', 2006 *The Geographical Journal* 172, no. 1, pp. 66-77, p. 70.

221 Foucault, *supra* note 2, p. 137; see M. Dean, 'Four Theses on the Powers of Life and Death', 2004 *Contretemps* 5, December, pp. 16-29, p. 19.

222 M. Dillon & J. Reid, 'Global Liberal Governance – Biopolitics, Security and War', 2001 *Millennium – Journal of International Studies* 30, pp. 41-66, pp. 52, 57, referencing Agamben, *supra* note 6.

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.

226 M. Foucault, *Dits et Ecrits*, Vol. 3, 1994, p. 719.

terms'.²²⁷ 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.²²⁸ The violence that founds the state operates along new lines of deployment to ensure the state's continued existence.²²⁹

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.²³⁰

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 2006,²³¹ 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"',²³² and war became increasingly the foundation of the political itself.²³³ 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,²³⁴ and the decision on the exception produces the state of emergency.²³⁵ The subject of the state becomes both perpetrator and victim.²³⁶

227 De Larrinaga, *supra* note 192, pp. 519, 524.

228 H. Lefebvre, *The Production of Space*, 1991, p. 280.

229 *Ibid.*

230 Agamben, *supra* note 4, pp. 2-3, 6-7, 13-14; Agamben, *supra* note 6, p. 64; U. Raulff, 'An Interview with Giorgio Agamben', 2004 *German Law Journal* 5, pp. 609-614, p. 608.

231 T. Shanker & S. Tavernise, 'The Reach of War: Detainees; Murder Charges for 3 G.I.'s in Iraq', *New York Times*, 20 June 2006.

232 See Mbembe, *supra* note 106, p. 23.

233 M. Hardt & A. Negri, *Multitude*, 2004, p. 334.

234 G. Agamben, 'Security and Terror', 2002 *Theory & Event* 5, no. 4, p. 1. See De Larrinaga, *supra* note 192, p. 524; Diken & Laustsen, *supra* note 135, pp. 12, 14.

235 Agamben, *supra* note 6, p. 170.

236 See D. Nelson, 'Anthropologist Discovers Legendary Two-Faced Indian! Margins, the State, and Duplicity in Post-War Guatemala', in Das & Poole, *supra* note 115, pp. 117-140.

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, Sabeen 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.

238 Diken & Laustsen, *supra* note 135, p. 14.

239 See Žižek, *supra* note 107.

240 Mbembe, *supra* note 106.

241 G. Agamben, *Remnants of Auschwitz: The Witness and the Archive* (D. Heller-Roazen, Trans.), 1999, p. 55.

242 See Connolly, *supra* note 143, p. 37.

243 DeCaroli, *supra* note 7, pp. 68-69; F. Barth, 'Introduction', in *Ethnic Groups and Boundaries – The Social Organization of Culture Difference*, 1969, pp. 9-28, pp. 9-10, 15.

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.

251 See G. Agamben, ‘Das Unheilige Leben – Ein Gespräch mit dem Italienischen Philosophen Giorgio Agamben’, Interview with Hannah Leitgeb and Cornelia Vismann, 2001 *Literaturen* 2, no. 1, pp. 16-21, p. 20.

252 Mbembe, *supra* note 106, pp. 30-34.

253 See Stepputat, *supra* note 25, pp. 340, 345, 355, 357.

254 See L. Landau & T. Monson, ‘Displacement, Estrangement and Sovereignty – Reconfiguring State Power in Urban South Africa’, 2008 *Government and Opposition* 43, no. 2, pp. 315-336, p. 321.

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.

258 C. Tripp, *A History of Iraq*, 2007, pp. 1-7.

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.