

HOW THE U.S. OCCUPATION IMPOSED ECONOMIC REFORMS ON IRAQ IRRESPECTIVE OF INTERNATIONAL LAW AS A FOUNDATION FOR THE PRESENT OIL BONANZA

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I. INTRODUCTION

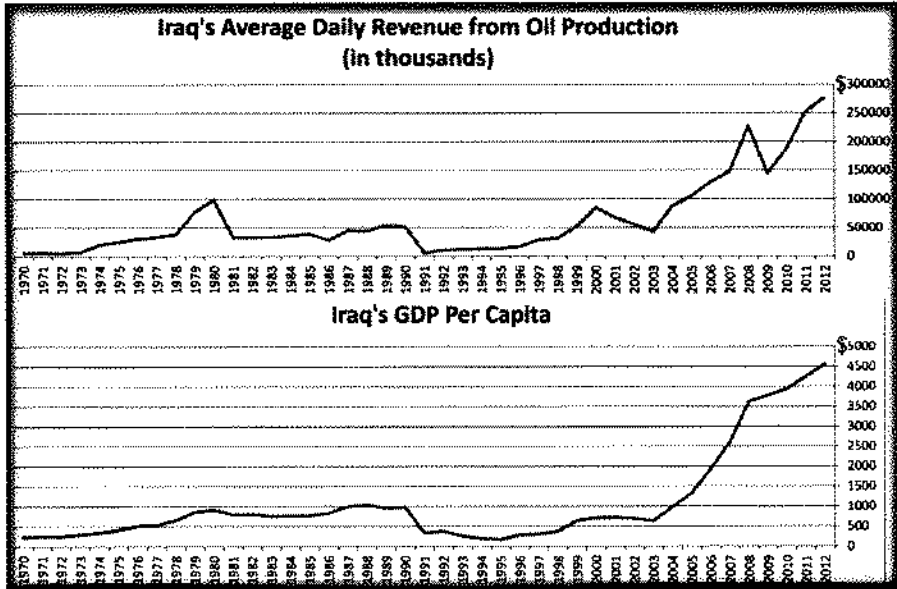
Following the invasion of Iraq, the Coalition Provisional Authority (“CPA”) unilaterally imposed economic restructuring on the country when international law strictly forbids altering legal institutions of an occupied territory, and Security Council Resolution 1483, which authorized the U.S. and U.K. to undertake administrative and fiduciary responsibilities, also did not sanction the reforms.¹ In March 2013, the Special Inspector General for Iraq Reconstruction produced its final report² and the investigation acknowledged that occupation operations were “frequently in the breach,” but underscored the lesson that institutional transformations can be painful while also ultimately contributing to stability in fragile states.³ With societal divisions and an insurgency in Iraq in 2014, Iraq is now less stable than before the 2003 invasion. Also, a rudimentary lesson in reconstruction and reform is conspicuous from assessing the cause of the drastic fluctuations and economic viability of the Iraqi population. The following chart depicts the positive correlation between oil revenue and per capita income over the past thirty years.⁴

1. See *infra* Parts III, IV.

2. SPECIAL INSPECTOR GEN. FOR IRAQ RECONSTRUCTION (SIGIR), LEARNING FROM IRAQ (Mar. 2013), available at <http://cybercemetery.unt.edu/archive/sigir/20131001083907/http://www.sigir.mil/learningfromiraq/index.html> (last visited Dec. 5, 2015) [hereinafter SIGIR].

3. Stuart W. Bowen, Jr., *A Golden Moment: Applying Iraq's Hard Lessons to Strengthen the U.S. Approach to Stabilization and Reconstruction Operations*, 34 FLETCHER F. WORLD AFF. 17, 17-18 (2010).

4. Iraq's average daily revenues per year constructed with Organization of Petroleum Exporting Countries (“OPEC”) ASP data for annual production multiplied by average yearly price per barrel from 1970 to 2012. See generally Table 3.6: *Daily and Cumulative Crude Oil Production in OPEC Members*, Organization of Petroleum Exporting Countries (2014), available at <http://www.opec.org/library/Annual%20Statistical%20Bulletin/interactive/current/FileZ/Main-Datci/en/Section3.html> (last visited Nov. 20, 2015) (providing Iraq's average annual oil production); U.S. Dep't of Energy, *Petroleum & Other Liquids: Cushing, OK WTI Spot Price FOB*, U.S. ENERGY INFO. ADMIN., available at <http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=RWTC&f=A> (last visited Nov. 20, 2015) (providing annual per barrel price in US dollars from 1986 to 2012); see *Per Capita GDP at Current Prices - U.S. Dollars*, U.N. DATA, available at <http://data.un.org/Data.aspx?d=SNAAMA&f=grID%3A101%3BcurrID%3AUSD%3BpcFlag%3A1> (last visited Nov. 20, 2015); *Historical Oil Prices Chart*, FORECASTCHART, available at <http://www.forecast-chart.com/chart-crude-oil.html> (last visited Nov. 20, 2015) (providing monthly per barrel price of oil in US dollars from 1970 to 1985).



Iraqi per capita income plummeted after 1990⁵ and by 2003 Iraq was ranked seventy-first out of ninety-four developing countries for economic well-being on the U.N. Poverty index in 2003.⁶ Over 80% of the Iraqi population lived in poverty.⁷ The astounding plunge in income that began in the early 1990s was a direct consequence of the severe economic sanctions that the Security Council placed on the Iraqi people for over a decade following Iraq's invasion of Kuwait. In his 2006 book, former U.N. Humanitarian Coordinator for Iraq Hans C. Von Sponeck, documented the misery inflicted on the Iraqi people as "cold blooded" and explained that U.S. and U.K. leaders politically manipulated foreign relations with propaganda so that few decision-makers outside of Iraq were willing to cease the suffering.⁸ The

5. Steve Shifferes, *Iraq's Economy Declines by Half*, BBC (Oct. 10, 2003, 3:02 PM), available at <http://news.bbc.co.uk/2/hi/business/3181248.stm> (last visited Nov. 20, 2015) (using alternative measures, reporting that Iraqi income went from \$3600 in 1980, to \$770-1020 in 2001, and to \$450-610 by the end of 2003).

6. U.N. DEV. PROGRAMME [UNDP], HUMAN DEVELOPMENT REPORT: MILLENNIUM DEVELOPMENT GOALS: A COMPACT AMONG NATIONS TO END HUMAN POVERTY 247 (2003).

7. Hamada Zahawi, *Redefining the Laws of Occupation in the Wake of Operation Iraqi Freedom*, 95 CAL. L. REV. 2295, 2327 (2007) (citing UNDP ARAB HUMAN DEVELOPMENT REPORT: CREATING OPPORTUNITIES FOR FUTURE GENERATIONS (2002)).

8. H.C. VON SPONECK, A DIFFERENT KIND OF WAR: THE UN SANCTIONS REGIME IN IRAQ 13 (2006); see also CHALMERS JOHNSON, BLOWBACK: THE COSTS AND CONSEQUENCES OF AMERICAN EMPIRE 9 (2000) (noting that U.S. officials were

sanctions arguably violated humanitarian law⁹ as hundreds of thousands of Iraqis were estimated to have died as a result of malnutrition and inadequate medical care.¹⁰ Iraqis did not believe that they should have been punished for Hussein's act of invading Kuwait,¹¹ and scholars have long debated the uncertain effectiveness of unilateral and third-party sanctions on altering the objectionable policies of a target-government.¹²

The economic juncture occurred after the 2003 war. Security Council Resolution 1483 lifted economic and trade sanctions on Iraq, but real economic conditions for common Iraqis worsened after the invasion because of the chaotic economic, civil, and political conditions plaguing the country several years into the occupation.¹³ Despite that it was a decade of U.S.- and U.K.-led sanctions that were

cognizant of the suffering, with National Security Advisor Sandy Berger stating that the UN sanction program was "unprecedented for its severity in the whole of world history"). See generally Reem Bahdi, Book Review, 25 WINDSOR Y.B. ACCESS JUST. 365, 366-67 (2007) (reviewing HANS C. VON SPONECK, A DIFFERENT KIND OF WAR: THE UN SANCTIONS REGIME IN IRAQ (2006)). During the sanction period, the US tried to block watertankers from reaching civilians but the UN condemned the move and noted that "access to clean drinking water" was "the major cause of child deaths," and the US was concerned that vaccines for infant diseases could be used for chemical weapons, but UNICEF and the World Health Organization protested and European biological weapons experts remarked that such a claim was "flatly impossible" scientifically. NOAM CHOMSKY, HEGEMONY OR SURVIVAL 128 (2004) (citing Joy Gordon, *Cool War: Economic Sanctions as a Weapon of Mass Destruction*, HARPER'S, Nov. 2002, at 43-49).

9. RICHARD FALK, THE COSTS OF WAR: INTERNATIONAL LAW, THE UN, AND WORLD ORDER AFTER IRAQ 46-47 (2008).

10. Stefan M. Brooks, *Economic Effects of the Persian Gulf War on Iraq*, in THE ENCYCLOPEDIA OF MIDDLE EAST WARS: THE UNITED STATES IN THE PERSIAN GULF, AFGHANISTAN, AND IRAQ CONFLICTS 400 (Spencer C. Tucker ed., 2010) ("[I]t is estimated that anywhere from tens of thousands to hundreds of thousands—perhaps even 1 million—Iraqis, disproportionately children, died under the sanctions regimes during 1990—2003.").

11. See Aida Dabbas & Jillian Schwedler, *Protesting Sanctions Against Iraq: A View From Jordan*, 208 MIDDLE EAST REP. 37, 37 (1998).

12. See GARY CLYDE HUFBAUER ET AL., ECONOMIC SANCTIONS RECONSIDERED: HISTORY AND CURRENT POLICY 8 (3d ed. 2007); see also Jeffrey A. Meyer, *Second Thoughts on Secondary Sanctions*, 30 U. PA. J. INT'L L. 905, 906, 924-25 (2009); Peter L. Fitzgerald, *Pierre Goes Online: Blacklisting and Secondary Boycotts in U.S. Trade Policy*, 31 VAND. J. TRANSNAT'L L. 1, 91 (1998) ("[A]n international consensus does appear to be building that the unilateral extraterritorial application of these controls to third parties is impermissible. . . . [T]he international community is coming to regard the blacklisting of third parties, or secondary boycotts, as 'unreasonable,' and therefore an unjustified intrusion upon the sovereignty of the neutral state.").

13. Zahawi, *supra* note 7, at 2298.

solely responsible for impoverishing the Iraqi people, after the invasion, Secretary of Defense Rumsfeld stated that “Iraq [has] a completely failed economy.”¹⁴ The Bush Administration’s CPA initiated a rhetoric campaign that linked Iraqi prosperity to the need to impose market and capitalism reforms¹⁵ even though merely dropping sanctions and permitting Iraqis to freely export oil would have raised per capita income fivefold. This post-war boon was particularly noticeable because long-term trends in the per barrel market price more than quadrupled during the occupation.¹⁶ Oil-rich countries prospered while the rest of the world hit a recession.¹⁷

The U.S.-led war in Iraq in 2003 devastated infrastructure¹⁸ and the impact on U.S. taxpayers was scandalous. Prior to the invasion, the Bush Administration represented to the American public that the war would cost approximately \$50 to \$60 billion and repeatedly evaded inquiries from reporters about deeper and prolonged cost estimates, which were expenditures that may have also been relevant to the American economy proceeding into a recession.¹⁹

14. L. PAUL BREMER III, *MY YEAR IN IRAQ: THE STRUGGLE TO BUILD A FUTURE OF HOPE* 114 (2006).

15. See *infra* Part II.

16. See Robert Bejesky, *Geopolitics, Oil Law Reform, and Commodity Market Expectations*, 63 OKLA. L. REV. 193, 273-77 (2011) [hereinafter Bejesky, *Geopolitics*] (noting also that the drastic surge in oil prices was partially due to the uncertainty and turmoil in the oil market which reverberated after the invasion and from the indeterminate impact on other OPEC and oil-producing countries).

17. Alaaalhsan Salloom & Yibing Ding, *Macroeconomic Effects of the (2008-09) Global Financial Crisis on the Arab Countries*, 2 BERKELEY J. SOC. SCI. 1, 1-3 (2012) (stating that the 2008-09 “financial crisis has been described as the worst global financial crisis . . . since the Great Depression in the 1930s” but also noting that “annual GDP growth in real terms reached 5.9% for the Arab region as a whole” from 2006 to 2008).

18. Conor McCarthy, *The Paradox of the International Law of Military Occupation: Sovereignty and the Reformation of Iraq*, 10 J. CONFLICT & SECURITY L. 43, 62 (2005) (explaining that the Hague Conventions make it clear that it is “not permissible for an occupying power to allow an occupied territory to fester in a state of economic, social, political and infrastructural retardation created by the conflict from which the occupation has resulted.”). Hostility may be intense when civilians, cultural items, and infrastructure are inadequately protected during conflict as the laws of war require. See Wayne Sandholtz, *The Iraqi National Museum and International Law: A Duty to Protect*, 44 COLUM. J. TRANSNAT’L L. 185, 203-05 (2005).

19. See Robert Bejesky, *Politico-International Law*, 57 LOY. L. REV. 29, 84-91 (2011) [hereinafter Bejesky, *Politico*] (discussing the Bush administration’s evasion of costs and neglect of economic consequences); Michael Boyle, *How the US Public Was Defrauded by the Hidden Cost of the Iraq War*, GUARDIAN (Mar. 11, 2013, 8:30 AM), available at

Due to the near nine-year occupation, expenditures mounted, and may cost American taxpayers \$3.7 trillion when considering continuing medical expenditures for American troop injuries.²⁰ Despite the astronomical figure of \$3.7 trillion, the Special Inspector General for Iraq Reconstruction stated that \$60 billion was spent on reconstruction and only about \$21 billion of that amount was clearly earmarked for construction projects, with the rest predominantly being spent on construction-related security objectives.²¹

Congressional debate was waged over the extent that Iraq should have funded its own reconstruction,²² but it now appears that Iraq has paid in another way. The Bush Administration continued to maintain that the Iraq War was not executed over an interest in oil, but affirmed that the U.S. would “protect Iraq’s natural resources” from Hussein’s regime,²³ and stripped the pre-war oil contracts that China, France, and Russia had consummated with Hussein’s regime.²⁴ In April 2013, CNN reported on Iraq’s metamorphosis from a nationalized oil industry prior to the invasion to a privatized industry that is now dominated by Western oil companies: “Yes, the Iraq War was a war for oil, and it was a war with winners: Big Oil.”²⁵ Iraqis

<http://www.theguardian.com/commentisfree/2013/mar/11/us-public-defrauded-hidden-cost-iraq-war> (last visited Nov. 20, 2015) (stating that prior to the war “the Bush administration estimated that it would cost \$50-60 [billion] to overthrow Saddam Hussein and establish a functioning government . . . Some estimates suggest[] that it may even eventually cost as much as \$3.7 [trillion.]”).

20. Boyle, *supra* note 19 (noting that during the occupation, the extent of expenditures allocated for the Iraq War was not clearly designated on the American budget).

21. SIGIR, *supra* note 2, at 9; Boyle, *supra* note 19 (estimating \$90 billion).

22. Albio Sires, *Iraq Should Pay for Its Reconstruction*, HILL (Mar. 14, 2007, 11:40 AM), available at <http://thehill.com/blogs/congress-blog/politics/28785-iraq-should-pay-for-for-its-reconstruction> (last visited Nov. 20, 2015) (“American taxpayers have already paid \$379 billion,” and H.R. 1325 was introduced to “require[] the Iraqi government to match all U.S. funds spent for reconstruction in Iraq.”).

23. *In the President's Words: The Rights and Aspirations of the Iraqi People*, WHITE HOUSE (July 8, 2004), available at <http://georgewbush-whitehouse.archives.gov/infocus/iraq/rightsandasp.html> (last visited Nov. 20, 2015) (citing President George W. Bush, Address at the Washington Hilton Hotel (Feb. 26, 2003)).

24. See Bejesky, *Geopolitics*, *supra* note 16, at 209, 221, 226-27.

25. Antonia Juhasz, *Why the War in Iraq was Fought for Big Oil*, CNN (Apr. 15, 2013, 7:42 AM), available at <http://www.cnn.com/2013/03/19/opinion/iraq-war-oil-juhasz/> (last visited Nov. 20, 2015); Christopher Layne, *From Preponderance to Offshore Balancing*, in *THE USE OF FORCE: MILITARY POWER AND INTERNATIONAL POLITICS* 283, 285 (Robert J. Art & Kenneth N. Waltz eds.,

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were not left aghast over this outcome because seven years earlier a University of Michigan Institute for Social Research poll revealed that 76% of Iraqis believed that the invasion was “to control Iraqi oil.”²⁶ Antonia Juhasz, author of *The Tyranny of Oil* (2008) and *The Bush Agenda* (2006), emphasizes that “ExxonMobil, BP and Shell were among the oil companies that ‘played the most aggressive roles in lobbying their governments to ensure that the invasion would result in an Iraq open to foreign oil companies.’”²⁷

The extraordinary per capita income surge for Iraqis in recent years is unrelated to the CPA’s capitalist legal transplants, and, over the long-run, it is not apparent that Iraqis should be grateful to the U.K. and the U.S. after being punished economically for over a decade

6th ed. 2004) (calling access to Persian Gulf oil a vital U.S. security interest); Nafeez Ahmed, *Iraq Blowback: Isis Rise Manufactured by Insatiable Oil Addiction*, *GUARDIAN* (June 16, 2014, 12:17 PM), available at <http://www.theguardian.com/environment/earth-insight/2014/jun/16/blowback-isis-iraq-manufactured-oil-addiction> (last visited Nov. 20, 2015) (“The meteoric rise of Isis is a predictable consequence of a longstanding US-led geostrategy in the Middle East that has seen tyrants and terrorists as tools to expedite access to regional oil and gas resources.”). France, China, and Russia, all permanent Security Council members, also recently were awarded contracts in Iraq. Press Release, Technip, Technip awarded FEED contract in Basra, Iraq (Apr. 10, 2014), available at <http://www.technip.com/en/press/technip-awarded-feed-contract-basra-iraq> (last visited Nov. 20, 2015); Tim Arango & Clifford Krauss, *China Is Reaping Biggest Benefits of Iraq Oil Boom*, *N.Y. TIMES* (June 2, 2013), available at http://www.nytimes.com/2013/06/03/world/middleeast/china-reaps-biggest-benefits-of-iraq-oil-boom.html?pagewanted=all&_r=0 (last visited Nov. 20, 2015); Andrew Critchlow, *Russia’s Lukoil Opens Giant Iraq Oil Field, Adding to Crude Glut*, *TELEGRAPH* (Mar. 29, 2014, 4:58 PM), available at <http://www.telegraph.co.uk/finance/newsbysector/energy/oilandgas/10731708/Russia-Lukoil-opens-giant-iraq-oil-field-adding-to-crude-glut.html> (last visited Nov. 20, 2015). These later oil concessions would presumably increase the interest of these key countries in ensuring support for the investment-friendly government and legal structure. Peter Ford, *Why China Stays Out of Islamic State Fight, For Now*, *CHRISTIAN SCI. MONITOR* (Sept. 26, 2014), available at <http://www.csmonitor.com/World/Asia-Pacific/2014/0926/Why-China-stays-out-of-Islamic-State-fight-for-now> (last visited Nov. 20, 2015) (raising the fact that China has significant oil contracts in Iraq but did not want to get involved as a member of any “coalition” after the US began bombing ISIS because China has “mistrust of US intentions.”).

26. *Iraqi Attitudes: Survey Documents Big Changes*, U. MICH. NEWS SERV. (June 14, 2006), available at <http://web.archive.org/web/20060714022315/http://www.umich.edu/news/index.html?Releases/2006/Jun06/r061406a> (last visited Nov. 20, 2015).

27. Dahr Jamail, *Western Oil Firm Remain as US Exits Iraq*, *AL JAZEERA* (Jan. 7, 2012, 6:45 PM), available at <http://www.aljazeera.com/indepth/features/2011/12/2011122813134071641.html> (last visited Oct. 4, 2015).

during Hussein's rule. Moreover, despite that Iraq's per capita income has significantly increased in recent years, some percentage of the improved domestic production represents value collected by multinational oil companies. Select individuals and groups in Iraq have also enriched themselves while the common Iraqi is destitute, and it is this desperation and hostility toward Prime Minister Maliki, a twenty-three year Iraqi defector-exile who monopolized oil revenues and licenses,²⁸ that are underlying causes of the uprising that swept the country with violence in 2014.²⁹

This current framework unfolded gradually in a country with a population subject to a humanitarian catastrophe and initiated with

28. Christopher Helman, *How Iraq's Kurds May Be The Unlikely Losers in the ISIS Chaos*, FORBES (June 12, 2014, 5:51 PM), available at <http://www.forbes.com/sites/christopherhelman/2014/06/12/how-iraqs-kurds-may-be-the-unlikely-losers-in-the-isis-chaos/> (last visited Nov. 20, 2015) ("For years the Kurds have been at loggerheads with the oil ministry in Baghdad" because Kurds want freedom to export oil but "Baghdad insists that only the federal government can license exports and that unilateral exports are blatantly illegal."). Maliki is an Iraqi exile of twenty-three years and was ironically personally welcomed into that leadership position by George W. Bush. Michael Abramowitz, *Bush's Gut Feeling On Maliki Is Positive*, WASH. POST (June 18, 2006), available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/06/17/AR2006061700662.html> (last visited Nov. 20, 2015).

29. *Analyzing Potential Challenges of Fighting the Islamic State*, PBS NEWSHOUR (Sept. 11, 2014, 6:22 PM), available at <http://www.pbs.org/newshour/bb/analyzing-potential-challenges-fighting-islamic-state/> (last visited Nov. 20, 2015) ("ISIS emerged because of certain conditions in this region, disorder, dysfunction, alienation, the residue of European colonialism" and the "key facts are that efforts on the part of the United States to use military power to bring . . . stability [and] democracy to this region . . . have actually fostered greater instability."); Shashank Bengali & Patrick J. McDonnell, *Resignation of Prime Minister Maliki Gives Rise to Hope in Iraq*, L.A. TIMES (Aug. 15, 2014, 5:28 PM), available at <http://www.latimes.com/world/middleeast/la-fg-iraq-maliki-resignation-relief-20140815-story.html> (last visited Nov. 20, 2015) ("Sunni leaders accuse Maliki's Shiite-dominated government and security forces of marginalizing members of their sect as well as carrying out unlawful abductions and other abuses. Those policies, they say, have fueled support for the Islamic State militants."); Michael Stephens, *Iraq Crisis: How Extreme Are the Fighters in Isis?*, BBC (June 21, 2014), available at <http://www.bbc.com/news/world-middle-east-27945954> (last visited Nov. 20, 2015) ("Travelling around the country in recent days, I have been shocked at the levels of deprivation that some of Iraq's citizens have endured. [The recent insurgency is not driven by a jihadist mentality but] is a more general uprising of large groupings of disaffected communities throughout north-western Iraq and a product of years of social exclusion, poor governance and corruption by the Iraqi government."); *Iraq in Ruins: Post-War Life Overshadowed by Crumbling Infrastructure, Corruption, Poverty*, RT TV (May 17, 2013, 9:56 AM), available at <http://rt.com/news/iraq-poverty-war-crisis-414/> (last visited Nov. 20, 2015) ("Iraqi infrastructure is constantly failing and people are forced to beg.").

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Bush Administration and CPA rhetoric that promoted basic market economic reforms and evolved to deeper capitalist reforms with tacit acceptance akin to the same reason a frog meets its fate by not leaping out of a pot of hot water as it progressively gets hotter. The period of CPA governance and its dictates are critical to the present status of Iraq's political and economic system because for the past eight years Prime Minister Maliki became a dictator, established a mafia to terrorize society, suppressed political dissent, corruptly benefited himself and his cronies, and consequently locked in reforms without the democratic process functioning.³⁰ Part II begins with the initial rhetoric, which was that Iraq needed a market economy to nourish democratization and Part III discusses how the CPA transplanted new capitalist codes wholesale on Iraq. Part IV emphasizes how privatization programs were advocated and how unrestricted foreign investment rules were instituted in conjunction with a free-for-all dollarization of the Iraqi economy, which furnished purchasing power and surreptitiously enhanced favoritism for the occupation due to humanitarian dependence. Part V discusses reconstruction contracts in Iraq, which was the occupation's paramount obligation because of the devastation wrought by bombing and war operations. However, funding allocated to rebuilding represented only one-half of one

30. See Zaid Al-Ali, *How Maliki Ruined Iraq*, FOREIGN POL'Y (June 19, 2014), available at http://www.foreignpolicy.com/articles/2014/06/19/how_maliki_ruined_iraq_armed_forces_isis (last visited Nov. 20, 2015) (writing of Maliki's suppression of dissent and killing, torturing, and jailing of protestors); Lord Maginnis, *A Fictitious ISIL to Scare Us Away From the Truth in Iraq*, HUFFINGTON POST (Aug. 15, 2014, 10:59 AM), available at http://www.huffingtonpost.co.uk/lorde-maginnis/iraq-isis_b_5494529.html (last visited Nov. 20, 2015) (explaining that "Corruption in the government and those affiliated to the government is almost unimaginable with billions of dollar embezzled and laundered, thus crippling the country's economy" and a member of the UK House of Lords writing that "Maliki has created a Mafia-like network of criminals and assassins to eliminate the voice of opposition at every level" and estimated that an average of a thousand Sunnis have been killed every month for the past decade by Maliki's assassins); Arwa Damon & Mohammed Tawfeeq, *Iraq's Leader Becoming a New 'Dictator,' Deputy Warns*, CNN (Dec. 13, 2011, 6:33 PM), available at <http://www.cnn.com/2011/12/13/world/meast/iraq-maliki/> (last visited Nov. 20, 2015) (reporting that Iraqi Deputy Prime Minister Saleh al-Mutlag expressed to CNN that he was "shocked" to witness President Barack Obama address Maliki as "the elected leader of a sovereign, self-reliant and democratic Iraq" when Maliki had been ignoring power-sharing institutions and when the US left Iraq "with a dictator" who systematically suppresses dissent with impunity, and further stating that the country is "going toward a dictatorship" and "[p]eople are not going to accept that, and most likely they are going to ask for the division of the country. And this is going to be a disaster").

percent of the actual total U.S. taxpayer spending for the Iraq war and occupation³¹ and the functioning of the procurement process provides lessons of an abysmal application of the Rule of Law.

II. SIMMERING: IMPOSING AN AGENDA BY INITIATING LESS CONTROVERSIAL DISCOURSE

The Bush Administration's rationale for invading and occupying Iraq was to disarm the country of supposedly existing chemical, biological, and nuclear weapon programs, which ultimately did not exist.³² Yale Law Professors Ackerman and Hathaway punctuate that the Authorization for the Use of Military Force was a limited authorization to use the U.S. military conditioned on there being an actual imminent threat, which means that when the White House began offering additional rationalizations after the war, particularly of humanitarian intervention, "such talk was blatantly inconsistent with the plain language of the 2002 resolution."³³ In 2008, after the Senate Select Committee on Intelligence ("SSCI") completed its five-year investigation, the SSCI Chairman remarked: "In making the case for war, the Administration repeatedly presented intelligence as fact when it was unsubstantiated, contradicted or even nonexistent. . . . Sadly, the Bush Administration led the nation into war under false pretenses."³⁴ The *post facto* rationalization of "liberating" the country was not a legitimate justification for war, but political liberalization under *jus post bellum* can reasonably be

31. Using the \$21 billion of actual construction contract spending divided by an estimated \$3.7 trillion in war and occupation spending. Boyle, *supra* note 19. This means that the other 99.5% paid by US taxpayers represented direct and derivative costs for the near nine-year military occupation and suggests that quibbling over whether Iraq should pay for its own reconstruction was almost incidental relative to costs borne by American taxpayers for non-reconstruction operations.

32. Robert Bejesky, *Intelligence Information and Judicial Evidentiary Standards*, 44 CREIGHTON L. REV. 811, 875-82 (2011).

33. See Bruce Ackerman & Oona Hathaway, *Limited War and the Constitution: Iraq and the Crisis of Presidential Legality*, 109 MICH. L. REV. 447, 464 (2011); see also Robert Bejesky, *Weapon Inspections Lessons Learned: Evidentiary Presumptions and Burdens of Proof*, 38 SYRACUSE J. INT'L L. & COM. 295, 350-69 (2011) [hereinafter Bejesky, *Weapon Inspections*].

34. Press Release, Senate Intelligence Committee, Senate Intelligence Committee Unveils Final Phase II Reports on Prewar Iraq Intelligence (June 5, 2008), [available at](http://web.archive.org/web/20080606162033/http://intelligence.senate.gov/press/record.cfm?id=298775) <http://web.archive.org/web/20080606162033/http://intelligence.senate.gov/press/record.cfm?id=298775> (last visited Nov. 21, 2015).

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interpreted to mean establishing institutions for democracy, holding elections, and instituting human rights protections.³⁵ These reforms, during a foreign occupation, are particularly logical because it is the citizenry who will live under the laws and should have the self-determination right to choose the market structure, the degree of economic openness, and protectionist measures. Instead, the CPA and Bush administration officials assumed a much deeper prerogative by dictating a unilaterally-chosen economic reform agenda for Iraq and did so piecemeal by commencing with discourse that annexed less controversial market principles with democratization and eventually progressed to an assumption that complete economic openness and unrestricted capitalism are inseparable from democratization, which is not a mainstream or consensus international community norm.³⁶

35. RICHARD N. HAASS, *INTERVENTION: THE USE OF AMERICAN MILITARY FORCE IN THE POST-COLD WAR WORLD* 13 (rev. ed. 1999) (arguing when states violate minimum standards by committing, permitting, or threatening intolerable acts against their own people or other nations, then some of the privileges of sovereignty are forfeited); Robert Bejesky, *Pruning Non-Derogative Human Rights Violations into an Ephemeral Shame Sanction*, 58 *LOY. L. REV.* 821, 829-31 (2012) (noting that ensuring adequate human rights standards are met is a legitimate occupier prerogative as universal standards are required in a number of human rights agreements). With respect to assisting the emergence of institutions of self-government, self-determination permits a people with a common connection to a given territory to have the right to govern their own affairs, which might include state sovereignty, as was critical during the era of decolonization. See G.A. Res. 2625 (XXV), at 121 (Oct. 24, 1970); G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 21 (Dec. 10, 1948) (“The will of the people shall be the basis of the authority of government.”); International Covenant on Civil and Political Rights art. 1, *opened for signature* Dec. 19, 1966, S. EXEC. DOC. NO. 95-20, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) (“[a]ll peoples have the right of self-determination,” the right to “freely determine their political status and freely pursue their economic, social, and cultural development.”).

36. James Thuo Gathii, *Commerce, Conquest, and Wartime Confiscation*, 31 *BROOK. J. INT’L L.* 709, 737 (2006) (stating that not even the US has such a *laissez faire* economy as the one that the CPA imposed on Iraq); Edwin Villmoare, *The Fog of Nation Building: Lessons from Kosovo?*, 18 *TRANSNAT’L LAW.* 25, 26 (2004) (mentioning that from the perspective of domestic institution building, “there can be no genuine progress in any one of these initiatives [of democracy, economic development, and nation building] if there is not progress in all,” but also recognizing the fairly universal failures outside the West). Markets are the dominant ideology but no country in the world is completely open to foreign investment and trade, and no newly emerging market economy would likely abruptly open its banking industry without some foreign ownership restrictions or protectionist regulations. James R. Barth, Gerald Caprio, Jr. & Ross Levine, *Bank Regulation and Supervision in 180 Countries from 1999 to 2011*, 5 *J. FIN. ECON. POL’Y* 111, 177 (2013) (noting that in a study of 180 countries over the 1999 to 2011 period, “[t]here is substantial heterogeneity of bank regulatory and supervisory policies across countries” but there has been some convergence over the past dozen years).

For example, the Bush Administration's September 2002 National Security Strategy states: "America will encourage the advancement of democracy and economic openness in . . . nations, because these are the best foundations for domestic stability and international order."³⁷ CPA Administrator Paul Bremer stated: "A free economy and a free people go hand in hand. History tells us that substantial and broadly held resources, protected by property rights, are the best protection of political freedom. Building such prosperity in Iraq will be a key measure of our success here."³⁸ These propositions are not inconsistent with basic reform agendas; even communist systems floundered when they endeavored to completely abolish market mechanisms³⁹ and the U.S. and Europe traversed several decades in which socialism, the welfare state, and more public utilities were the norm.⁴⁰

Even the most ambitious World Trade Organization ("WTO") members traversed intense domestic political debates over how certain industries and commodities would react to freer trade. Joel I. Klein, Acting Assistant Att'y Gen., U.S. Dep't of Justice, A Note of Caution with Respect to a WTO Agenda on Competition Policy, Presented at The Royal Institute of International Affairs (Nov. 18, 1996) (noting the "intense interest at the intersection of trade and competition policy" at the time of WTO negotiations).

37. EXEC. OFFICE OF THE PRESIDENT, THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA, fwd. (2002).

38. Robert Looney, *The Neoliberal Model's Planned Role in Iraqi's Economic Reconstruction*, 57 MIDDLE E. J. 568, 574 (2003).

39. CHARLES E. LINDBLOM, POLITICS AND MARKETS: THE WORLD'S POLITICAL-ECONOMIC SYSTEMS 11 (1977) (stating that the Soviet Union, Cuba, and other communist system relied on markets, money, and prices as a method of organizing transactions in society for consumer spending). Communist and capitalist systems are predominantly distinguished by the former's authoritarian role in generating production plans, but even the Russian people were able to accumulate savings and hold rubles in bank accounts. PHILIP ROEDER, RED SUNSET: THE FAILURE OF SOVIET POLITICS 152-53 (1993).

40. THOMAS PIKETTY, CAPITAL IN THE TWENTY-FIRST CENTURY 154 (Arthur Goldhammer trans., Belknap Press 2014) (2013) (stating that Europeans in the post-World War II era believed that capitalism was being eradicated); PAUL PIERSON, DISMANTLING THE WELFARE STATE?: RAEGAN, THATCHER AND THE POLITICS OF RETRENCHMENT 23, 39 (1994) (stating that welfare states became the norm across advanced industrialized democracies, with 30% to 60% of GNP circulating through government programs). Keynesian economic principles balanced complete socialization of the economy and unbridled capitalism. Peter A. Hall, *Conclusion: The Politics of Keynesian Ideas*, in THE POLITICAL POWER OF ECONOMIC IDEAS: KEYNESIANISM ACROSS NATIONS 361, 364-66 (Peter A. Hall ed., 1989). Every capitalist democracy committed itself to providing public goods and social insurance and engaged in macroeconomic management to avert "working-class radicalization." ROBERT FRANZESE, JR., MACROECONOMIC POLICIES OF DEVELOPED DEMOCRACIES 2, 9, 14 (2002) (further noting that only six of the 21

A population surely desires economic prosperity, which will yield more societal stability,⁴¹ but it is crucial for the population to rationally choose its own market formulation because the population could later be offended by the manner in which reforms are imposed and how inequalities manifested, which may undermine effective political institutions.⁴² In her book, *World on Fire*, Yale Law Professor Amy Chua states that “contrary to conventional wisdom, markets and democracy—at least in the form in which they’re currently being promoted—may not be mutually-reinforcing in the developing world.”⁴³ Creating a market system with new laws in a developing country *does not* decidedly translate into imposing unrestricted capitalism, favoring privatization of available public assets, and promulgating undue “shock treatment,”⁴⁴ all of which are not congruous with the gradual capitalist evolutions of developed Western economies. Joseph Stiglitz, Nobel Laureate in Economics and former Chief Economist at the World Bank, published an editorial responding to the Bush administration’s use of “shock therapy” capitalism in Iraq. Stiglitz wrote:

[T]here is a broad consensus that shock therapy, at least at the level of microeconomic reforms, failed, and that countries (Hungary, Poland, and Slovenia) that took the gradualist approach to privatization and the

economically advanced democracies studied kept total public flows below 60% of their Gross Domestic Product (“GDP”) through 1990). Socialism was a middle ground between strict capitalism and communism.

41. See 148 CONG. REC. H1773-05(daily ed. May 1, 2002) (statement of Rep. Watts) (“[W]e must reach out to developing nations across the globe, often beset by forces of terror, and demonstrate how free markets, open trade, and private enterprise under the rule of law can lead to prosperity for their citizens. Our national security improves when global stability prevails.”); *Office of the Coordinator for Reconstruction and Stabilization*, U.S. DEP’T STATE, available at <http://2001-2009.state.gov/s/crs/> (last visited Nov. 21, 2015) (espousing that its mission was “to prevent or prepare for post-conflict situations, and to help stabilize and reconstruct societies in transition from conflict or civil strife, so they can reach a sustainable path toward peace, democracy and a market economy.”). Market mechanisms and capitalism are effective at developing society and wealth by delegating economic ordering and emphasizing personal responsibility, but the problem is that imposed laws and processes without regard to the desires of the Iraqi people and generating socioeconomic turmoil undermined what market reforms were designed to achieve.

42. See JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* 174 (1980) (stating that in societies where there is private ownership and excessive disparities in wealth, inequalities without redistribution from the rich can lead to significant dissent).

43. Amy Chua, *The Profitable and the Powerless: International Accountability of Multinational Corporations: The Sixty Annual Grotius Lecture: World on Fire*, 19 AM. U. INT’L L. REV. 1239, 1240 (2004).

44. See generally NAOMI KLEIN, *THE SHOCK DOCTRINE* (2007).

reconstruction of institutional infrastructure managed their transitions far better than those that tried to leapfrog into a laissez-faire economy.

.....
This record suggests that one should think twice before trying shock therapy again. But the Bush administration, backed by a few handpicked Iraqis, is pushing Iraq towards an even more radical form of shock therapy than was pursued in the former Soviet world. Indeed, shock therapy's advocates argue that its failures were due not to excessive speed - too much shock and not enough therapy - but to insufficient shock.⁴⁵

Despite the evidence available in case studies indicating that shock therapy failed to quickly blossom into prosperity, the U.S. occupation reduced criticism for its own lack of conscientiousness over the abrupt and sweeping capitalistic dictates by presenting the reforms as mainstream and blessed by international economic institutions. The CPA reportedly submitted drafts of CPA orders to the World Bank and International Monetary Fund ("IMF") for comment⁴⁶ and the World Bank and IMF "strongly urged" that Iraq be made "one of the most open economies in the world" for foreign investment.⁴⁷ Besides the fact that a handful of the most economically powerful countries, led by the U.S., have traditionally been able to leverage voting power and compel policies within the Bretton Woods Institutions ("BWI")⁴⁸ and the fact that there was actually no public

45. Joseph E. Stiglitz, *Iraq's Next Shock Will Be Shock Therapy*, PROJECT SYNDICATE (Feb. 12, 2004), available at <http://www.project-syndicate.org/commentary/iraq-s-next-shock-will-be-shock-therapy> (last visited Nov. 21, 2015).

46. Brett H. McGurk, *Revisiting the Law of Nation-Building: Iraq in Transition*, 45 VA. J. INT'L L. 451, 460 (2005).

47. *Financial Reconstruction in Iraq: Hearing Before the Subcomm. on Int'l Trade & Fin. of the Comm. on Banking, Hous. & Urban Affairs.*, 108th Cong. 53 (2005) [hereinafter *Financial Reconstruction in Iraq*] (statement of M. Peter McPherson, former CPA Director of Economic Development) (commenting that the CPA's investment laws made Iraq "the most open economy in the region - and frankly one of the more open economies of the world" and that those initiatives were "strongly urged" by the World Bank during briefings with CPA).

48. See Kristen E. Boon, "Open for Business": *International Financial Institutions, Post-Conflict Economic Reform, and the Rule of Law*, 39 N.Y.U. J. INT'L L. & POL. 513, 574 n.222 (2007); ANDREAS F. LOWENFELD, INTERNATIONAL ECONOMIC LAW 503 (2002); PATRICIA ADAMS, ODIOS DEBTS: LOOSE LENDING, CORRUPTION, AND THE THIRD WORLD'S ENVIRONMENTAL LEGACY 67 (1991) (noting that the IMF and World Bank, at creation, were required to be "beyond political influence of any one country" and not be "unaccountable"). Responsibility

record of the World Bank and IMF advice and therefore no certainty that this advice was incorporated into the orders adopted by the CPA,⁴⁹ the CPA was not beholden to the World Bank's advice and international economic institutions cannot exempt the CPA from adhering to restrictions of occupation law. The CPA owed its fiduciary obligations to the Iraqi people. However, what more can be said about the prospect for compromising the integrity of an international institution after Bush appointed Paul Wolfowitz, the same neoconservative war hawk who advocated false claims that led to the Iraq War⁵⁰ and who lacked experience in economic development,⁵¹ to the position of president of the World Bank.⁵²

The 1990s "Washington Consensus" pressured countries to fortify the free flow of investment and prodded structural adjustment, austerity, and privatization programs, which proved controversial and manipulative.⁵³ The U.N., IMF, World Bank, and other international

can be shirked when the institution or the state is employed as the unit of analysis without recognizing that both the dominate state and the institution can also be perceived as one in the same or at least incorporate the same interests, values, and assumptions. What was implemented for Iraq appears to go well beyond published World Bank Guidelines to support market economies. Alan K. Audi, *Iraq's New Investment Laws and the Standard of Civilization: A Case Study on the Limits of International Law*, 93 GEO. L.J. 335, 350-51 (2004).

49. Boon, *supra* note 48, at 550.

50. See Bejesky, *Politico*, *supra* note 19, at 38-52 (discussing advocacy of the neoconservative group that planned for and advocated for the Iraq War long before the invasion).

51. See Liam Halligan, *The World Bank Will Be Hated*, TELEGRAPH (Mar. 20, 2005, 12:01 AM), available at <http://www.telegraph.co.uk/finance/2912396/The-World-Bank-will-be-hated.html> (last visited Nov. 20, 2015) (reporting that Nobel Laureate in economics Joseph Stiglitz stated about Wolfowitz's appointment that "[t]he World Bank will once again become a hate figure" and his concern is that "the World Bank will now become an explicit instrument of US foreign policy"); see generally PETER J. HAMMER, CHANGE AND CONTINUITY AT THE WORLD BANK: REFORMING PARADOXES OF ECONOMIC DEVELOPMENT 163 n.13 (2013) (reporting that after Wolfowitz's candidacy for the World Bank position was announced, Columbia University Economics Professor Jeffrey Sachs stated that "it's time for other candidates to come forward who have experience in development . . . This is a position on which hundreds of millions of people depend for their lives").

52. Mark Tran, *Bush Picks Wolfowitz to Head World Bank*, GUARDIAN (Mar. 16, 2005, 7:35 AM), available at <http://www.theguardian.com/business/2005/mar/16/usnews.paulwolfowitz> (last visited Nov. 20, 2015).

53. See generally JOSEPH E. STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS (2002); Antonio Perez, *Prescriptions for Iraq, Predictions for Russia and Performance for China: Legal Frameworks for Economic Transition in Iraq - Occupation Under the Law of War vs. Global Governance Under the Law of Peace*, 18 TRANSNAT'L LAW. 53, 53 (2004) (stating that the Washington Consensus

institutions were never authorized to impose lawmaking on foreign countries⁵⁴ and must instead respect the domestic economic and political sovereignty of countries.⁵⁵ Becoming a member of the IMF and promising to adhere to principles of “good governance,” to implement transparent financial and economic policy, and to assure financial accountability,⁵⁶ has never clearly granted the IMF a right to impose austerity and privatization programs.⁵⁷ Instead, the IMF resolutely impels ultimatums as conditions on loans,⁵⁸ including when

consistently was under attack); Audi, *supra* note 48, at 360 (noting discontent with the Washington Consensus); John Williamson, *What Should the World Bank Think About the Washington Consensus?*, 15 WORLD BANK RES. OBSERVER 251, 251-52, 255 (2000) (scholar who coined the term “Washington Consensus” explaining that he intended the term to apply to “market fundamentalism,” that the policies that were implemented by the Bank may have been more expansive than his definition, and that it is incorrect to presume that the policies implemented correctly represent the standards that do garner significant unanimity).

54. See NDIVA KOFELE-KALE, *THE INTERNATIONAL LAW OF RESPONSIBILITY FOR ECONOMIC CRIMES: HOLDING STATE OFFICIALS INDIVIDUALLY LIABLE FOR ACTS OF FRAUDULENT ENRICHMENT* 396 (2006) (noting the traditional role of the World Bank and IMF that changed from merely lending to a law-making role by using conditionality).

55. Articles of Agreement of the International Monetary Fund art. IV, § 3(b), July 22, 1944, 60 Stat. 1401, 2 U.N.T.S. 39 (stating that in exchange for member countries permitting the IMF to consent to monitoring of a member country’s financial flows, the IMF must “respect the domestic social and political policies of members.”); Articles of Agreement of the International Bank for Reconstruction and Development art. IV, § 10, *opened for signature* Dec. 27, 1945, 60 Stat. 1440, 2 U.N.T.S. 134 (“The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned.”).

56. *Code of Good Practices on Transparency in Monetary and Fiscal Policies: Declaration of Principles*, INT’L MONETARY FUND 5, 13-15 (Sept. 26, 1999), available at <http://www.imf.org/external/np/mae/mft/code/eng/code2e.pdf> (last visited Nov. 21, 2015).

57. See generally Naomi Klein, *Bomb Before you Buy: The Economics of War*, 2 SEATTLE J. FOR SOC. JUST. 331, 332-334 (2004) (noting that countries across the world have banded together in dissent to IMF recommendations and rejecting privatizations).

58. See Dustin Sharp, *The Significance of Human Rights for the Debt of Countries in Transition*, in MAKING SOVEREIGN FINANCING AND HUMAN RIGHTS WORK 47, 50 (Juan Pablo Bohoslavsky & Jernej Letnar Černej eds., 2014) (emphasizing that the IMF and other international financial institutions have intensely influenced country spending and set conditions for loans, such as with structural adjustment programs); see Boon, *supra* note 48, at 526-28 (noting that while nothing in the World Bank and IMF Charters, as agreed upon by member or as official policies, authorizes the economic institutions to engage in lawmaking, since the late-1990s, the World Bank and IMF have explicitly advocated legal and judicial reform projects and have provided advice and even draft laws on banking, taxation, finance, telecommunications, commercial law, and other fiscal matters). The programs generally advocate liberalization, minimal government regulation,

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the borrowing country may not have been primarily to blame for the economic distress ultimately leading to the reliance on BWIs.⁵⁹

Experts have maintained that the BWIs' neoliberal dictates compounded the global financial crisis in the late-1990s⁶⁰ and relegated poor countries to a state of financial dependency.⁶¹ Consequently, one might conceive that the Bretton Woods institutions would relish the opportunity to render similar counsel just a few years later and introduce neoliberal reform on a developing country with an enormous financial potential that could be achieved by lifting sanctions on oil exports and tapping more oil wells to service future debt obligations. However, instead of permitting Iraq to reach a point of self-sufficiency, early dependency was implanted and conditions were imposed even though it was a decade of external sanctions that crippled Iraq's economy. In September 2004, a United Nations World Food Program investigation discovered that 6.5 million Iraqis, or 25%

and maximizing incentives for investment and clearly promote self-interested purposes of the institutions. *See id.* at 529, 532; *but see* IBRAHIM F. I. SHIHATA, *THE WORLD BANK IN A CHANGING WORLD* 82 (1991) (former World Bank General Counsel noting that there are limits to recommendations).

59. *See generally* Robert Bejesky, *Currency Cooperation and Sovereign Financial Obligations*, 24 FLA. J. INT'L L. 91, 104-24 (2012) [hereinafter Bejesky, *Currency Cooperation*] (expressing that a country's financial and economic distress may have been caused by or intensified by global economic conditions or odious regimes (rather than a regime with a legitimate nexus to the populace), that the IMF may grant loans to alleviate a crisis to prop up the currency and place conditions on receipt of loans, and that the conditions may leave the populace with permanent institutions even if the populace or a legitimate government did not cause the conditions requiring the economic aid).

60. *See* Perez, *supra* note 53, at 53; Graciana del Castillo, *When the Fighting Stops: Economic Reconstruction of War-Torn Countries: The Role of the International Financial Institutions*, 38 SETON HALL L. REV. 1265, 1267 (2008) (noting that the post-Cold War reconstruction agenda has not been that successful); *see e.g.* Joseph E. Stiglitz & Martin Guzman, *Argentina Default? Griesafault is Much More Accurate*, *GUARDIAN* (Aug. 7, 2014, 11:37 AM), available at <http://www.theguardian.com/business/2014/aug/07/argentina-default-griesafault-more-accurate> (last visited Nov. 21, 2015) ("For Argentina, the path to its 2001 default started with the ballooning of its sovereign debt in the 1990s, which occurred alongside neoliberal 'Washington Consensus' economic reforms that creditors believed would enrich the country. The experiment failed, and the country suffered a deep economic and social crisis, with a recession that lasted from 1998 to 2002. By the end, a record-high 57.5% of Argentinians were in poverty, and the unemployment rate skyrocketed to 20.8 %.").

61. Fantu Cheru (Independent Expert), *Effects of Structural Adjustment Policies on the Full Enjoyment of Human Rights*, ¶ 30, U.N. Doc. E/CN.4/1999/50 (Feb. 24, 1999) ("The countries of sub-Saharan Africa, with their poor credit rating, have largely been turned into an IMF 'macroeconomic guinea pig' since they depend largely on resources from the multilateral institutions.").

of the population, “remain highly dependent on [government] food rations,”⁶² but three months later, Iraq’s Interim Vice President Abdel Mahdi extemporized about IMF austerity conditions being imposed on Iraq in exchange for loans: “We really need to work on our subsidy side. Subsidies are taking almost 60 percent of our budget. So this is something we have to work on.”⁶³ The IMF agreed to loan Iraq \$2.5-\$4.3 billion over three years providing its budgetary directives were implemented.⁶⁴ IMF conditions were introduced to slash food subsidies and other public benefits, as they were in other countries.⁶⁵

III. GETTING HOTTER: IMPOSING NEW ECONOMIC LAW REFORMS

Over its fourteen month existence, the CPA adopted over thirty new economic laws,⁶⁶ which were predominantly skeletal capitalist frameworks installed wholesale on Iraq. For example, modern banking laws can span hundreds of pages with provisions that promote reliable and efficient banking institutions, punish wrongdoing, and protect consumers (and the CPA mentioned concern over these dangers),⁶⁷ but the CPA’s banking law scrapped the preexisting framework and adopted a 66-page law that was quite devoted to

62. *Survey Shows High Prevalence of Food Insecurity in Iraq*, WORLD FOOD PROGRAMME (Sept. 28, 2004), available at <http://www.wfp.org/news/news-release/survey-shows-high-prevalence-food-insecurity-iraq> (last visited Nov. 21, 2015).

63. Emad Mekay, *Challenges 2004-2005: U.S. to Take Bigger Bite of Iraq's Economic Pie*, INTER PRESS SERVICE (Dec. 24, 2004), available at <http://www.ipsnews.net/2004/12/challenges-2004-2005-us-to-take-bigger-bite-of-iraqs-economic-pie/> (last visited Nov. 21, 2015) (reporting that there were hundreds of Americans working in Iraqi government agencies and “helping the interim Iraqi government continue to make major economic changes, including cuts to social subsidies”).

64. *Id.*; Mahmoud Hmoud, *The Use of Force Against Iraq: Occupation and Security Council Resolution 1483*, 36 CORNELL INT’L L.J. 435, 452 (2004) (stating that “the vast majority of Iraqis depended on O.F.F. [Oil-for-Food program]”).

65. Mekay, *supra* note 63. Country after country has been individually pressured into this system because of many decade-long debt crises and now Iraq was being coerced as well. See Bejesky, *Currency Cooperation*, *supra* note 59, at 104-24.

66. Boon, *supra* note 48, at 544.

67. Bank Law Order No. 40 of 2003 art. 2 (Coalition Provisional Authority [CPA], Iraq) [hereinafter Bank Law] (stating that the “primary regulatory objective of this Law is to maintain confidence in the banking system,” and that secondary objectives are “promoting public understanding of the banking system . . . protect[ing] . . . depositors, and . . . reduc[ing] financial crime. . .”).

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opening Iraq to foreign banking institutions with branches, subsidiaries, and representative offices.⁶⁸

Countries have routinely insulated their banking sector from foreign dominance during globalization initiatives,⁶⁹ but Iraq's Bank Law contained no provisions that restricted foreign banking investment in Iraq in terms of acquiring domestic banks or as a percentage of the banking economy.⁷⁰ In fact, the law eliminated existing protections and endowed foreign banks with "national treatment" as domestic banks,⁷¹ placing Iraqi banks, with weaker financial positions and without powerful parent offices in foreign countries, at a competitive disadvantage.⁷² The CPA-appointed Iraqi

68. *See id.* art. 1-23.

69. JAMES A. CAPORASO & MARY ANNE MADEIRA, *GLOBALIZATION, INSTITUTIONS AND GOVERNANCE* 158 (2012) (affirming that developing countries have relied on protectionism in their banking industries and noting that "[l]arge American or European banks can . . . easily drive local banks out of business and dominate the banking industry."). *See generally* MALCOLM COOK, *BANKING REFORM IN SOUTHEAST ASIA: THE REGION'S DECISIVE DECADE* (2008) (discussing history of protectionism in banking sector in Southeast Asia); GERHARD FELS & GEORGE SUTJA, *PROTECTIONISM AND INTERNATIONAL BANKING* (1991).

70. Bank Law, *supra* note 67, art. 4, §§ 6-7 (CPA limiting the number of wholly owned foreign banks to six until 2008 and permitting up to 50% foreign ownership in "an existing or new domestic bank").

71. *Id.* art. 4, § 5; *Financial Reconstruction in Iraq*, *supra* note 47, at 101 (statement of John B. Taylor, Under Sec'y of the Treasury for Int'l Affairs) (noting that preexisting laws only permitted Arab banks to operate in Iraq).

72. *See Financial Reconstruction in Iraq*, *supra* note 71, at 101 (stating that Iraqi banks "lack technology" and "a modern, efficient financial sector," but also that "Iraqi authorities decided that it would be important for foreign banks to operate in Iraq because of the experience, technology, and resources they can offer."). One example of a competitive disadvantage is that a handful of Iraqi banks required 200 to 800 percent collateral for the amount sought to be obtained in a loan. Ariyn Tobias Gajilan, *Entrepreneurs in Iraq Tangle in U.S. Red Tape*, CNN (Nov. 1, 2004), [available at http://money.cnn.com/magazines/fsb/fsb_archive/2004/11/01/8190934/index.htm](http://money.cnn.com/magazines/fsb/fsb_archive/2004/11/01/8190934/index.htm) (last visited Nov. 21, 2015). With respect to "Iraqis" making choices for the banking industry, Iraqi authorities at this point consisted of an Iraqi Governing Council with 25 members who were appointed by the CPA and who were not accepted by the populace. *See generally* Governing Council of Iraq Regulation No. 6 of 2003 pmbl. (CPA, Iraq); Monroe E. Price, *Foreword: Iraq and the Making of State Media Policy*, 25 *CARDOZO ARTS & ENT. L.J.* 5, 15 (2007) ("The Iraqi Governing Council . . . [was] largely appointed or selected by the CPA, [and] lacked legitimacy."); Rajiv Chandrasekaran, *Death Stalks an Experiment in Democracy*, *WASH. POST* (June 22, 2004), [available at http://www.washingtonpost.com/wp-dyn/articles/A58888-2004Jun21.html](http://www.washingtonpost.com/wp-dyn/articles/A58888-2004Jun21.html) (last visited Nov. 21, 2015) ("But Iraqis criticize the local councils and the interim national government as illegitimate because their members were not elected."). Americans were appointed to Iraqi government agencies, ran the agencies, and implemented economic reform. *See*

agency heads possessed the authority to grant licenses to foreign banks for an “indefinite” period of time⁷³ and the general policy for the banking system was driven by the fact that the Central Bank of Iraq was required to adhere to the transnational integration mandates contained in Order 56.⁷⁴

On April 26, 2004, CPA Order 81 imposed legal protections for trade-related intellectual property.⁷⁵ The policy, cited in the third sentence of Order 81, asserts that Iraq’s intellectual property laws were deficient and that the Governing Council affirmed that “significant change in the Iraqi intellectual property system [is] necessary to improve the economic condition of the people of Iraq.”⁷⁶ The CPA spoke on behalf of the Iraqi people even though many of these provisions were rejected outright by developing countries when they were introduced as WTO side agreements in 1995.⁷⁷ Iraqis were not in a position to churn out inventions to utilize the reciprocal monopoly rights that intellectual property protections afford, but the law instead behooves the owners of intellectual property attached to imports and foreign investments.

The CPA’s dictates, premised on extrapolations in the occupation’s mandate, were accordant with the agenda and rhetoric of the Bush White House. At a May 9, 2003 commencement address, President Bush promoted the notion of a U.S.-Middle East free trade

generally Mekay, *supra* note 63.

73. Bank Law, *supra* note 67, art. 4, § 2 (“[L]icense[s] or permit[s] granted under this Law shall be granted in writing for an indefinite period of time.”).

74. See generally Central Bank Law Order No. 56 of 2004 art. 2 (CPA, Iraq).

75. See generally Patent, Industrial Design, Undisclosed Information, Integrated Circuits and Plant Variety Law Order No. 81 of 2004 pmbl. (CPA, Iraq).

76. *Id.*

77. See generally *id.* § 1, ¶ 54 (providing for the gamut of IP protections, including the “Plant Variety Law,” to protect patent rights in genetically-modified plant species); see GREG GRANDIN, EMPIRE’S WORKSHOP: LATIN AMERICA, THE UNITED STATES, AND THE RISE OF THE NEW IMPERIALISM 160 (2006) (“Iraqi Order 81’ even prohibited Iraqi farmers from saving heirloom seeds from one year to the next, obliging them to buy them anew each season from corporations like Monsanto and Dow Chemical...”); ERIC HERRING & GLEN RANGWALA, IRAQ IN FRAGMENTS: THE OCCUPATION AND ITS LEGACY 240 (2005) (noting that the CPA adopted Order Number 81 that banned Iraqi farmers from saving genetically modified seeds from year to year and the Protection of New Plant Varieties had only 48 members); Thomas A. Wathen, *Trade Policy: Clouds in the Vision of Sustainability*, in BUILDING SUSTAINABLE SOCIETIES: A BLUEPRINT FOR A POST-INDUSTRIAL WORLD 76 (Dennis C. Pirages ed., 1996) (stating that in the case of intellectual property protections, developing countries were wary of the protections but were given a ten year grace period to implement rules).

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agreement and ostensibly presumed that “liberty,” “freedom,” “justice,” and “democracy,” were byproducts of the expansion of capitalism.⁷⁸ One month later and concomitant with experts predicting that Iraqi businesses would be unable to compete with the newly-appearing deluge of inexpensive imports, Bush administration officials were declaring a need to promptly “hammer[] out a free-trade agreement between Iraq and the United States”⁷⁹ and of sponsoring WTO membership for Iraq.⁸⁰

The CPA scrambled to expeditiously open Iraq’s economy at the domestic level, including by waiving and disposing of preexisting Iraqi laws designed to protect domestic industry,⁸¹ overhauling Iraqi corporate law and securities law, suspending major pre-invasion economic frameworks with the addition of new market regulations,⁸²

78. George W. Bush, President of the U.S., Commencement Address at the University of South Carolina (May 9, 2003) (“Across the globe, free markets and trade have helped defeat poverty, and taught men and women the habits of liberty. . . . [W]ith free markets and fair laws, the people of the Middle East will grow in prosperity and freedom.”); Susan L. Sakmar, *Globalization and Trade Initiatives in the Arab World: Historical Context, Progress to Date, and Prospects for the Future*, 42 U.S.F. L. REV. 919, 920, 925 (2008) (noting that Bush proposed that the United States take steps to create a Middle East Free Trade by 2013, which would involve negotiating “comprehensive bilateral [Free Trade Agreements]” with the US and “all countries in the region”); *id.* at 927 (noting that Bush further stated that free trade would decrease poverty and make some countries less “vulnerable to terrorist networks.”).

79. Edmund L. Andrews, *After the War: The Economy*, N.Y. TIMES (June 1, 2003), available at <http://www.nytimes.com/2003/06/01/world/after-war-economy-after-years-stagnation-iraqi-industries-are-falling-wave.html> (last visited Nov. 21, 2015).

80. From the later declassified Future of Iraq Project reports, produced before the invasion, the reports actively postulated and planned the steps needed to get Iraq into the WTO. U.S. DEP’T OF STATE, FUTURE OF IRAQ PROJECT: OIL AND ENERGY WORKING GROUP 66-70 (2003) (see section entitled Iraq: Economic Development, the Oil Sector, and Membership of the WTO). In February 2004, Iraq attained observer status at the WTO. Press Release, CPA, Iraq Achieves Observer Status at the WTO (Feb. 12, 2004), available at http://govinfo.library.unt.edu/cpa-iraq/pressreleases/20040212_WTO.html (last visited Nov. 21, 2015).

81. See Audi, *supra* note 48, at 335.

82. Amendment to the Company Law No. 21 of 1997 of 2004 pmbi. (CPA, Iraq) (“[S]ome of the rules concerning company formation and investment under the prior regime no longer serve a relevant social or economic purpose . . .”). The CPA’s new securities law eliminated the Baghdad Stock Exchange, removed all previous government oversight, created a new Iraqi Stock Exchange, and then formed a new Interim Iraq Securities Commission with core rules. Interim Law on Securities Markets Order No. 74 of 2004 pmbi. (CPA, Iraq) (“Recognizing that some of the regulations concerning securities markets under the prior regime are not well-suited to a modern, efficient, transparent and independently regulated securities market . . .”).

and lifting Iraqi trade protections, tariffs, and customs to permit the free flow of foreign products into Iraq.⁸³ The CPA reduced tariffs on imports to 5% and the Trade Bank of Iraq was constituted with an initial capitalization of one hundred million dollars earmarked to stimulate exports and imports.⁸⁴ A glaring negative impact of the breakneck capitalist reforms was a long-term increase in the unemployment rate,⁸⁵ which would predictably gail workers. Apparently to marginalize dissent from the working class, the combination of occupation initiatives and early Iraqi governments classified state workers and civil servants and denied them the right to organize and participate in collective bargaining,⁸⁶ arrested labor leaders, blocked strikes, and even enacted new laws that would restrict the right of labor to organize and strike in the future.⁸⁷

83. Trade Liberalization Policy Order No. 12 of 2003 § 1 (CPA, Iraq) (suspending all tariffs and trade restrictions).

84. Trade Bank of Iraq Order No. 20 of 2003, §§ 1, 4; Jeff Madrick, *Economic Scene: The Economic Plan for Iraq Seems Long on Ideology, Short on Common Sense*, N.Y. TIMES (Oct. 2, 2003), available at <http://www.nytimes.com/2003/10/02/business/economic-scene-economic-plan-for-iraq-seems-long-ideology-short-common-sense.html> (last visited Nov. 21, 2015) (noting the 5% tariff level and 15% corporate tax rate); see also Audi, *supra* note 48, at 335.

85. ANTHONY ARNOVE, IRAQ: THE LOGIC OF WITHDRAWAL 15 (2006) (remarking that three years into the occupation, approximately half of Iraqi workers were unemployed).

86. Shiva Falsafi, *Civil Society and Democracy in Japan, Iran, Iraq and Beyond*, 43 VAND. J. TRANSNAT'L L. 357, 425 (2010).

87. GRANDIN, *supra* note 77, at 159 (emphasizing the crackdown on organized labor); Falsafi, *supra* note 86, at 425 (noting that after the CPA dissolved and in August 2005, the Iraqi government passed Decree 8750 which permitted the seizure of union assets, which further weakened labor movements); Matthew Harwood, *Pinkertons at the CPA*, WASH. MONTHLY (Apr. 2005), available at <http://www.washingtonmonthly.com/features/2005/0504.harwood.html> (last visited Nov. 21, 2015) (describing the massacre of union officials and that "Americans have largely left the Iraqi unions to fend for themselves, and in some cases actively undercut them."); Rajiv Chandrasekaran, *U.S. Back Off On Plans to Reform Economy*, WASH. POST (Dec. 28, 2003), available at http://articles.sun-sentinel.com/2003-12-28/news/0312270356_1_iraq-s-reconstruction-iraqis-civil-occupation (last visited Nov. 21, 2015) (stating that a 60% unemployment rate in Iraq has infuriated labor and that Bremer's intention to sell off state-owned enterprises further antagonized workers). In June 2005, Prime Minister Ibrahim Jafari planned to shed public sector jobs according to neoliberal dictates even as unemployment approached 50% and commentators believed that unemployment was breeding insurgencies. Jonathan Finer & Omar Fekiki, *Tackling Another Major Challenge in Iraq: Unemployment*, WASH. POST (June 20, 2005), available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/06/19/AR2005061900729.html> (last visited Nov. 21, 2015). Shrinking the size of the state to favor corporate and private ownership has

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The Bush administration appointed top Iraqi officials and crafted Iraqi foreign economic policy, while labeling it Iraqi foreign policy, and dispatched hundreds of American economic advisors to work in all Iraqi government ministries.⁸⁸ U.S. advisors were making critical economic decisions and sponsored the country's economic changes, including by emphasizing privatization and slashing social expenditures.⁸⁹ Imposing new rules and undermining the voice of labor may have also truncated organized dissident to the economic reform agenda. The treaty obligations and accords with BWIs leverage congruent domestic reform as an effective directive or cogent obligation. The Bush administration and its CPA were quickly "locking" Iraq into international treaties and foreign policies and setting trajectories for domestic laws, to which Iraqis would later be required to adhere, and this all transpired before elections were held.⁹⁰

IV. SCALDING: PROFFERING PRIVATIZATION

A. CPA Privatization Initiatives

Consistent with the general rhetorical position of the White House, CPA Administrator Bremer's discourse also conveyed the significance of interaction among elements of reform, which included emphasizing the importance of democratization, market prices, foreign investment, efficient allocation of resources in the economy, and ensuring strong property rights.⁹¹ On July 8, 2003, Bremer remarked:

long been promoted by the IMF and may benefit those who acquire privatized assets.

88. Mekay, *supra* note 63.

89. *Id.*

90. Despite much Bush administration rhetoric about quickly allowing self-rule, that was not the case. The Bush administration brought in its own government and the result of this razzle-dazzle babble of "transition" authorities merely affirms that institutional and legal choices were not the product of democratic choices. See generally Robert Bejesky, *The Enigmatic Origin of the CPA: An Attribute of the Unitary Executive*, 51 WILLAMETTE L. REV. 269, 279-291 (2015). The Bush administration was entrenching pre-selected loyalists into power for long-term allegiance to the occupation and locking in the rules.

91. See generally CPA *Official Documents*, CPA, available at <http://www.iraqcoalition.org/regulations/#Orders> (last visited Nov. 21, 2015) (list of orders specifies the focus). For an example of assuming that the CPA possessed all of the answers for Iraqi prosperity when political choices of the people should have governed see Paul Bremer, *Operation Iraqi Prosperity*, WALL ST. J. (June 20, 2003, 12:01 AM), available at <http://online.wsj.com/articles/SB105606663932885100> (last visited Nov. 21, 2015) ("The central lesson from past transitions is that the

Privatization is obviously something we have been giving a lot of thought to. When we sit down with the governing council. . . it is going to be on the table. The governing council will be able to make statements that could be seen as more binding and the trick will be to figure out how we do this. Everybody knows we cannot wait until there is an elected government to start economic reform.⁹²

The CPA's appointed members of the temporary Iraqi governing bodies were powerless⁹³ and it is not true that "everybody

private sector must be encouraged to rapidly allocate resources to their most productive uses. In other transition economies, the switch from value-destroying public enterprises to value-creating private ones has been accomplished by stimulating the growth of small and medium-sized private enterprises, which are best able to create jobs quickly. This encouragement takes place by reducing the subsidies to state-owned firms and establishing a clear and transparent commercial code (as well as honest judges to enforce it). More generally, a well-established system of property rights must be established in order for the economy to grow. . . . Opening Iraq to the rest of the world also promises to pay big dividends.").

92. Looney, *supra* note 38, at 574.

93. Bremer endowed himself with a veto power over all IGC decisions and appointments. See M. Cherif Bassiouni, *Post-Conflict Justice in Iraq: An Appraisal of the Iraq Special Tribunal*, 38 CORNELL INT'L L.J. 327, 352-53 (2005); Gregory H. Fox, *The Occupation of Iraq*, 36 GEO. J. INT'L L. 195, 206 (2005); Kristen A. Stilt, *Islamic Law and the Making and Remaking of the Iraqi Legal System*, 36 GEO. WASH. INT'L L. REV. 695, 695 (2004); Associated Press, *Bremer Suggests US May Block Islamic Law in Iraq*, USA TODAY (Feb. 17, 2004, 3:22 AM), available at http://usatoday30.usatoday.com/news/world/iraq/2004-02-16-islam-law_x.htm (last visited Nov. 21, 2015) (reporting that amid speculations that the IGC could act independently and exercise legislative authority, Bremer remarked that "it can't be law until I sign it."); Feisal Amin al-Istrabadi, *Reviving Constitutionalism in Iraq: Key Provisions of the Transitional Administrative Law*, 50 N.Y.L. SCH. L. REV. 269, 270 (2005) (Iraqi Ambassador to the UN accentuating that "nothing became law in Iraq unless it was signed by . . . Bremer. . . . It was the Civil Administrator, not the IGC, who had the power to legislate.") (citing S.C. Res. 1483 (May 22, 2003)); SIGIR, IRAQ RECONSTRUCTION: LESSONS IN HUMAN CAPITAL MANAGEMENT 11 (Jan. 2006) ("[The] CPA was the de facto government of Iraq that oversaw the reestablishment of Iraqi ministries, consulted with an advisory 'legislature,' promulgated laws and regulations, provided diplomatic links with foreign governments, and coordinated with the coalition's military leadership."). The CPA's authority over local Iraqi interests was recognized in Security Council Resolutions, but the resolution did not permit unilaterally dictating Iraqi political choices and laws. S.C. Res. 1483, pmb. (May 22, 2003) (U.S. and U.K. were represented as "the Authority"). Also, the General Accounting Office noted that the "CPA assigned U.S. advisors from various agencies, including the Department of State and the Department of Defense, to work directly with the Iraqi interim minister appointed by the Governing Council. According to a former senior advisor, the advisor had broad managerial authority, including the authority to hire and fire ministry employees, determine ministry budgets, change ministry structures and functions and make policy decisions." U.S. GOV'T ACCOUNTABILITY OFF. (GAO), GAO-04-902R, REBUILDING IRAQ: RESOURCE, SECURITY, GOVERNANCE,

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knows” that unilaterally imposing economic agendas, locking in rules that could foster economic and political distress, and shaping the dynamics of new property rights were required before the Iraqi people could choose legal institutions and socioeconomic change for themselves.⁹⁴ Nonetheless, the CPA did wrongfully dictate⁹⁵ an open capitalist economic system on Iraqis⁹⁶ and decrees were not only inconsistent with Iraqi tradition, culture, and morals,⁹⁷ but also originated from an even more coercive process than the milieu of pressures that dominant states had placed on other states to quickly adopt *laissez faire* practices and which periodically erupted into societal dissent throughout the developing world.⁹⁸ The CPA dramatized the existence of failings in bedrock Iraqi institutions as the basis for contending that institutional transformations were imperative to countenance a market economy, but in fact the first and foremost infrastructure necessary for a market economy is effective contract and property rights institutions, which were contained in the Iraqi Civil Code, but the CPA did not modify the Civil Code.⁹⁹ The Iraqi

ESSENTIAL SERVICES, AND OVERSIGHT ISSUES 75 (2004).

94. Ash U. Bali, *Justice Under Occupation: Rule of Law and the Ethics of Nation-Building in Iraq*, 30 *YALE J. INT'L L.* 431, 443 (2005); David Harvey, *Political and Economic Dimensions of Free Trade: Neoliberalism as Creative Destruction*, 610 *ANNALS* 22, 25 (2007) (reporting that an Iraqi member of the CPA protested the forced imposition of “free market fundamentalism” as “a flawed logic that ignores history”).

95. James Gallen, *Jus Post Bellum: An Interpretive Framework*, in *JUS POST BELLUM: MAPPING THE NORMATIVE FOUNDATION* 58, 62 (Carsten Stahn, Jennifer S. Easterday & Jens Iverson eds., 2014) (stating that occupation law was “designed to be palliative, such that major issues or redistribution of land or legal rights would take place in a peace agreement that would end the occupation and regularize the situation”).

96. Harvey, *supra* note 94, at 25-26; ANDREW J. BACEVICH, *AMERICAN EMPIRE: THE REALITIES AND CONSEQUENCES OF U.S. DIPLOMACY* 88 (2002) (stating generally that American capital “movement of goods, capital, people, and ideas” create an “integrated international order conducive to American interests, governed by American norms, regulated by American power, and, above all, satisfying the expectations of the American people for ever-greater abundance.”); Naomi Klein, *Baghdad Year Zero: Pillaging Iraq in Pursuit of a Neocon Utopia*, *HARPER'S* (Sept. 2004) (noting that the CPA policies were ideologically neoconservative).

97. See Haider Ala Hamoudi, *Money Laundering Amidst Mortars: Legislative Process and State Authority in Post-Invasion Iraq*, 16 *TRANSNAT'L L. & CONTEMP. PROBS.* 523, 543 (2007) (explaining that Iraq and other Islamic countries have had traditional and cultural traits that have regarded usury practices and exploitive capitalism akin to thievery).

98. See generally OSWALDO DE RIVERO, *THE MYTH OF DEVELOPMENT: THE NON-VIABLE ECONOMICS OF THE 21ST CENTURY* (2001).

99. See Dan E. Stigall, *Comparative Law and State-Building: The “Organic*

Civil Code fully comported with Western notions of property ownership and an owner's absolute right to dispose, use, and exploit property.¹⁰⁰ The CPA was more concerned with adopting new bodies of law that would structure unconstrained capitalism, oblige foreign investment, and urge for privatization of public assets.

Accordant with the archetypical advice rendered by BWIs, in June 2003, Bremer began announcing that Iraq possessed bloated, inefficient, and unsustainable state enterprises as a justification for privatization.¹⁰¹ On September 19, 2003, Bremer promulgated four orders that included "the full privatization of public enterprises, full ownership rights by foreign firms of Iraqi businesses, full repatriation of foreign profits . . . the opening of Iraq's banks to foreign control, national treatment for foreign companies and . . . the elimination of nearly all trade barriers."¹⁰² However, it is not clear that the appointed and impotent members of the Iraqi Governing Council (IGC) ever officially ratified any of the CPA's open market reforms.¹⁰³ The IGC later expressed that members unanimously rejected the CPA's

Minimalist" Approach to Legal Reconstruction, 29 LOY. L.A. INT'L & COMP. L. REV. 1, n.231 (2007).

100. Civil Code of 1990 art. 1048-49 (Iraq); see also Dan E. Stigall, *A Closer Look at Iraqi Property and Tort Law*, 68 LA. L. REV. 765, 772-73, 788 (2008). During the 1980s, Iraq followed liberalization and privatization simultaneously, which included the government privatizing agricultural land that reduced holdings from 50% public ownership during the mid-1980s to only 12% by 1989, and Iraq privatized seventy large construction, mineral extraction, and food processing factories. Kiren Aziz Chaudhry, *Economic Liberalization and the Lineage of the Rentier State*, 27 COMP. POL. 1, 8 (1994).

101. Looney, *supra* note 38, at 574.

A fundamental component of this process will be to force state-owned enterprises to face hard budget constraints by reducing subsidies and special deals . . . Iraq will no doubt find that opening its borders to trade and investment will increase competitive pressure on its domestic firms and thereby raise productivity.

Id. (citing Edmund Andrews, *Overseer in Iraq Vows to Sell-Off Government-Owned Companies*, N.Y. TIMES, June 23, 2003, at A13).

102. Harvey, *supra* note 94, at 25; see also Zahawi, *supra* note 7, at 2328.

103. Audi, *supra* note 48, at 355 (noting that Kamel Al-Gailani, the CPA-appointed Iraqi Minister of Finance, publicly reiterated the series of changes that would be made to Iraq's foreign investment laws).

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privatization program,¹⁰⁴ but the CPA pushed forward with the privatization agenda.¹⁰⁵

Two months later, Bush appointed Thomas Foley, his 2000 election campaign chairman and a Harvard Business School colleague,¹⁰⁶ for the mission of privatizing over two hundred state-owned industries, including chemical, mining, and cement companies.¹⁰⁷ Assets owned by the state, on behalf of the people, would be relinquished through a large-scale privatization process,¹⁰⁸ but the program was placed on hold.¹⁰⁹ Instead, on May 1, 2004, CPA Order 76 was adopted and stated that State Owned Enterprises (“SOEs”) would be transferred to Iraqi ministries and that the enterprises “shall no longer have a separate legal identity and shall cease to exist” after the transfer.¹¹⁰ SOEs were placed under the control of Ministry heads who were CPA appointees and who possessed the authority to control the ministries and the budgets, set policy, hire and fire ministry employees,¹¹¹ and ultimately, pursuant to Order 76, to consolidate, merge, or sell SOEs.¹¹² Years later, but still while under the U.S. military occupation, Maliki’s dictatorial

104. Klein, *supra* note 96. Bremer met with Iraqi Communications Minister Haider al-Abadi and Minister of Industry Mohamad Tafiq and al-Abadi recalls of this meeting: “I said, ‘Look, we don’t have the mandate to do any of this. Privatization is a big thing. We have to wait until there is an Iraqi government.’” *Id.* Tafiq stated even more directly: “I am not going to do something that is not legal, so that’s it.” *Id.*

105. Bali, *supra* note 94, at 442-43.

106. Thomas B. Edsall & Juliet Eilperin, *Lobbyists Set Sights on Money-Making Opportunities in Iraq*, WASH. POST, Oct. 2, 2003, at A21.

107. *Id.*

108. See ZACHARY SHORE, *BLUNDER: WHY SMART PEOPLE MAKE BAD DECISIONS* 206 (2008) (discussing comments by Foley allegedly stating that he did not care about international law restrictions but he instead promised the President that he intended to privatize all of Iraq’s SOEs within 30 days); GRANDIN, *supra* note 77, at 159; Klein, *supra* note 96.

109. Paul Krugman, *Who Lost Iraq?*, N.Y. TIMES (June 29, 2004), available at <http://www.nytimes.com/2004/06/29/opinion/who-lost-iraq.html> (last visited Nov. 22, 2015).

110. Consolidations of State-Owned Enterprises Order No. 76 of 2004 § 4 (CPA, Iraq).

111. GAO, *supra* note 93, at 75 (“[The] CPA assigned U.S. advisors from various agencies, including the Department of State and the Department of Defense, to work directly with the Iraqi interim minister appointed by the Governing Council. According to a former senior advisor, the advisors had broad managerial authority, including the authority to hire and fire ministry employees, determine ministry budgets, change ministry structures and functions and make policy decisions.

112. Consolidations of State-Owned Enterprises, *supra* note 110, § 4.

government¹¹³ announced plans to privatize over two hundred SOEs over the next three to four years.¹¹⁴ The institutional framework to promote privatization and to maintain the CPA's legal reforms had been set before the CPA dissolved.

Antonia Juhasz succinctly described what unfolded and how the new laws were adopted and enforced before there was an elected government to approve of the laws.¹¹⁵ The CPA referred to directives as a single codified source of foundational law, referred to as "Transitional Administrative Law" ("TAL"),¹¹⁶ which had a potentially permanent effect because of the inordinate procedures required of a future Iraqi government to scrap the TAL:

Laws governing banking, investment, patents, copyrights, business ownership, taxes, the media and trade have all been changed according to U.S. goals, with little real participation from the Iraqi people. . . . The TAL [laws] can be changed, but only with a two-thirds majority vote in the National Assembly, and with the approval of the prime minister, the president and both vice presidents. . . . The constitutional drafting committee has, in turn, left each of these laws in place.¹¹⁷

113. Al-Ali, *supra* note 30 (expressing that Maliki has alienated both Kurds and Sunnis, been corrupt, deemed himself the "preeminent military leader," dispatched security services to suppress peaceful protests by calling protestors "terrorists," hired thugs to beat and kill dissenters, and had security services arrest and torture dissenters until protests ended); Damon & Tawfeeq, *supra* note 30 (stating that Iraqi Deputy Prime Minister Saleh al-Mutlag expressed to CNN that he was "shocked" to witness President Barack Obama address Maliki as "the elected leader of a sovereign, self-reliant and democratic Iraq," when Maliki had been ignoring power-sharing institutions and when the US left Iraq "with a dictator" who systematically suppresses dissent with impunity).

114. Charlie Welsh & PK Semler, *Iraq Government to Restructure and Privatize Some 200 Industrial Companies*, FIN. TIMES (Oct. 7, 2010, 8:15 AM), available at <http://www.ft.com/cms/s/2/d0b9b9fe-d1e1-11df-965c-00144feabdc0.html#axzz3CwbtUjaZ> (last visited Nov. 22, 2015).

115. See generally Antonia Juhasz, *Bush's Economic Invasion of Iraq*, L.A. TIMES (Aug. 14, 2005), available at <http://articles.latimes.com/2005/aug/14/opinion/oe-juhasz14> (last visited Nov. 22, 2015).

116. Zahawi, *supra* note 7, at 2329-30 (noting that the TAL was even to be regarded as Iraq's interim constitution, suggesting that it should take precedence over all other law); Note, *Democracy in Iraq: Representation Through Ratification*, 199 HARV. L. REV. 1201, 1203 (2006).

117. Juhasz, *supra* note 115. Yet, at the time TAL proposals were launched, it was only intended to remain in effect until an elected government took office (nation-wide elections were scheduled for January 31, 2005). Law of Administration for the State of Iraq for the Transitional Period of Mar. 8, 2004 art. 2 (CPA, Iraq). Then, in the same law, it states that the laws would "remain in force until rescinded or amended by legislation duly enacted and having the force of law."

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The CPA codifications were also validated by the CPA's final order (Order 100), which replaced "the names of new Iraqi institutions and officials for those of the CPA" in order to "protect the [CPA] reforms into the future."¹¹⁸ The CPA included language to mendaciously designate that the reforms were the product of Iraqi government institutions.¹¹⁹ Lawyers and foreign officials warned that Security Council Resolution 1483 only authorized the occupation to "administrate," that the Hague Regulations of 1907 prevented the occupation from altering the laws of the occupied country, and that the reforms could be annulled.¹²⁰ Not one word in Resolution 1483

See id. art. 26(c). Theories that have permitted overruling foreign occupation dictates in the past have included asserting that the laws were not consistent with international law (i.e. the doctrine of postliminy) or that the occupier exceeded its authority. *See generally* ERNEST H. FEILCHENFELD, *THE INTERNATIONAL ECONOMIC LAW OF BELLIGERENT OCCUPATIONS* 145-50 (1942); ROLAND R. FOULKE, *2 A TREATISE ON INTERNATIONAL LAW* 289-90 (1920). This could have been a justification vis-à-vis foreign interests and might have reversed illegally attained property rights, but new codifications can change the law.

118. Zahawi, *supra* note 7, at 2332 (citing Gregory H. Fox, *The Occupation of Iraq*, 36 *GEO. J. INT'L L.* 195, 245 (2005)).

119. Bali, *supra* note 94, at 435 (noting that the CPA's occupation strategy is a "use of local proxies [the IGC and then the Interim Government] to attenuate its direct administration of Iraq by force."); *see also* Bartram S. Brown, *Intervention, Self-Determination, Democracy and the Residual Responsibilities of the Occupying Power in Iraq*, 11 *U.C. DAVIS J. INT'L L. & POL'Y* 23, 43-44 (2004). To assume that Iraqis favored and chose institutions without knowing anything about them or that the impotent CPA interim authority appointees could somehow legitimately assent on behalf of Iraqis is foolish. Nonetheless, the rules were bestowed with a robust effect as TAL.

120. Gathii, *supra* note 36, at 736 ("It is scarcely arguable that the powers exercised by the CPA in signing privatization contracts lacked legitimacy among a broad range of Iraqis and potentially may be subject to reversal by a post-occupation Iraqi regime . . ."); Audi, *supra* note 48, at 336, 353 (stating that major economic reforms imposed by the CPA could be deemed invalid under international law and could be subject to reversal); Klein, *supra* note 96 (remarking that a future Iraqi government could declare Bremer's orders illegal and foreign companies could have investments nullified). Convention (IV) Respecting the Laws and Customs of War on Land and its annex: Regulations Concerning the Laws and Customs of War on Land, arts 3, 43, Oct. 18, 1907, 36 *Stat.* 2277, 1 *Bevans* 631 [hereinafter *Hague Regulations*] (stating that the occupier must "respect[], unless absolutely prevented, the laws in force in the country" and that breaches make the occupier "liable to pay compensation."); *see* Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 47-54, Aug. 12, 1949, 6 *U.S.T.* 3114, 75 *U.N.T.S.* 31 (stating the importance to disseminating the Conventions rules and that those in breach are to be penalized). *See generally* Bali, *supra* note 94, at 439-40, 466-67. States and the Security Council required the US and UK to adhere to Geneva and Hague law. S.C. Res. 1472, ¶ 1 (Mar. 28, 2003); S.C. Res. 1483, *supra* note 93, ¶ 5; U.N. SCOR, 58th Sess., 4726th mtg., U.N. Doc. S/PV.4726 (Mar. 26, 2003); U.N. SCOR, 58th Sess., 4732d mtg., U.N. Doc. S/PV.4732 (Mar.

referred to sanctioning the occupying "Authority" or any faction of the occupation to engage in any semblance of "legislating."¹²¹ In the seven times that the Security Council Resolution refers to "institutions" and law-making initiatives, the language is circumscribed by affirmations that the Iraqi people will determine their "own political future" and that all U.N. members, U.N. organs, and "the Authority," which was the U.S. and U.K., were sanctioned to *assist* Iraqis in establishing their own institutions.¹²²

With respect to the CPA's attempted privatization agenda, it is true that colonial powers confiscated property and governed over foreign lands due to the ability to subjugate in conquest,¹²³ but international laws¹²⁴ and U.S. Supreme Court precedent have rebuked this norm.¹²⁵ Restrictions prohibit the occupier from appropriating

28, 2003).

121. See S.C. Res. 1483, *supra* note 93, ¶ 5.

122. See *id.* ¶¶ 1, 4, 5, 7, 8(c), 8(i), 9.

123. Johnson v. M'Intosh, 21 U.S. 543, 587, 590-95 (1823) (holding that conquest and discovery legitimated title over lands previously inhabited by Native Americans and because they lived in "tribes," incapable of governing themselves, and attained "subsistence . . . chiefly from the forest"); see Bejesky, *Currency Cooperation*, *supra* note 59, at 143-44; James Thuo Gathii, *Foreign and Other Economic Rights Upon Conquest and Under Occupation: Iraq in Comparative and Historical Context*, 25 U. PA. J. INT'L ECON. L. 491, 496-97 (2004) ("[T]he extinction of private property rights and contracts upon conquest is . . . a systemic expression of the hegemonic power of conquering states that goes back decades in the history of international law.").

124. See Hague Regulations, *supra* note 120, art. 46. ("Private property cannot be confiscated"); Bejesky, *Currency Cooperation*, *supra* note 59, at 138, 149, 155 (noting that decolonization has particularly served as a basis for upholding the right of sovereign self-determination).

125. Early US Supreme Court cases emphasized the right of locals to expel a foreign aggressor and confiscate the aggressor's property. *Ware v. Hylton*, 3 U.S. 199, 226 (1796) (holding that in expelling the British from American borders, "enemies, by every right, may be plundered, and seized upon" and that "whatever effects of the enemy are found with us who are his enemy, should change their master, and be confiscated, or go into the treasury"); see *Miller v. United States*, 78 U.S. 268, 304-05 (1870) (upholding the power of confiscation as a legal sovereign act pursuant to Congress's authority to declare and prosecute war); see also *Haycraft v. United States*, 89 U.S. 81, 94 (1874); *United States v. Percheman*, 32 U.S. 51, 51 (1833) ("Even in cases of conquest, it is very unusual for the conqueror to do more than to displace the sovereign and assume dominion over the country. The modern usage of nations, which has become law, would be violated; that sense of justice and of right, which is acknowledged and felt by the whole civilized world, would be outraged; if private property should be generally confiscated, and private rights annulled."). Legislation upholding confiscation was also enacted during the Civil War as both the Confederate government and Congress passed retaliatory legislation permitting confiscation of enemy property. James G. Randall, *Captured and Abandoned Property During the Civil War*, 19 AM. HIST. REV. 65, 65 (1913).

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private property and public assets of the occupied population. The Hague Regulations state that an occupying power can “take possession” of assets temporarily but cannot sell or transfer ownership of the property.¹²⁶ Article 55 explicitly addresses public property rights when it affirms that the occupying power “shall be regarded as an administrator and usufructuary” of public assets and that the occupier must “safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.”¹²⁷ Article 53 of the Geneva Convention states that “[a]ny destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited . . .”¹²⁸ With the explicit language incorporated into these

Another example is the seizure of foreign vessels on the high seas when ships were suspected of piracy or involvement in supporting an enemy. Act of June 24, 1795, 1 Stat. 572 (authorizing the defense of U.S. merchant vessels against French depredations)

126. Hague Regulations, *supra* note 120, art. 53, 55; see Eyal Benvenisti & Eyal Zamir, *Private Claims to Property Rights in the Future Israeli-Palestinian Settlement*, 89 AM. J. INT’L L. 295, 313 (1995).

127. Hague Relations, *supra* note 120, art. 55 (emphasis added) (listing public assets that include “public buildings, real estate, forests and agricultural estates belonging to the hostile State, and situated in the occupied country.”); see also Kristen Boon, *Legislative Reform in Post-conflict Zones: Jus Post Bellum and the Contemporary Occupant’s Law-Making Powers*, 50 MCGILL L.J. 285, 304-05 (2005); R. Dobie Langenkamp & Rex J. Zedalis, *What Happens to the Iraqi Oil?: Thoughts on Some Significant, Unexamined International Legal Questions Regarding Occupation of Oil Fields*, 14 EUR. J. INT’L L. 417, 432-33 (2003) (suggesting that an occupying power might appoint a private firm to temporarily manage public property or state-owned industry if the occupier does not have a self-enrichment intention and the appointment is in good faith and is economically sound).

128. Convention (IV) Relative to the Protection of Civilian Persons in Time of War art. 53, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter Fourth Geneva Convention]. During the 1949 diplomatic conference, which led to the adoption of the Fourth Geneva Convention, the US, UK, and Canada had no qualms with protecting private property from pillage but claimed that there was no basis for protecting public property owned by a defeated state and even maintained that victorious armies should be able to take government property to pay off debts. Lea Brilmayer & Geoffrey Chepiga, *Ownership or Use? Civilian Property Interests in International Humanitarian Law*, 49 HARV. INT’L L.J. 413, 425-26 (2008). Alternatively, the Soviet Union and China contended that “the destruction of [State] property affected not only the interests of the State but also those of individuals” since civilians relied on state-owned property for sustenance; the socialist governments contended that all types of property should be protected during warfare. *Id.* at 425-26 (citing 2A Final Record of the Diplomatic Conference Convened by the Swiss Federal Council for the Establishment of International Conventions for the Protection of War Victims and Held at Geneva from April 21st

prohibitions, the CPA's blatant hypocrisy, after devising a program and attempting to sell off SOEs, is encountered in Article 16 of the CPA's TAL, which states: "Public property is sacrosanct, and its protection is the duty of every citizen."¹²⁹

B. Foreign Investment

Historical occupations with exploitive intentions have been condemned,¹³⁰ but even if the occupier does not possess a profiteering motive, codification of new investment rules can transfer domestic resources to foreign interests¹³¹ and produce domestic economic winners and losers.¹³² Beneficiaries are apt to soundly support reforms and the foreign entities ostensibly correlated to that fortuity,¹³³ while the disenfranchised will be hostile to the reforms, feel politically ostracized,¹³⁴ and be distinctly unwilling to assent to a foreign power unilaterally dictating new laws.

to August 12th, 1949, at 649 (2004)).

129. Law of Administration for the State of Iraq for the Transitional Period, *supra* note 117, art. 16. The CPA did take Ba'ath party assets and recognized public assets on behalf of the people of Iraq. Management of Property and Assets of the Iraqi Baath Party Order No. 4 of 2003 § 3(1)-(3) (CPA, Iraq) (dictating that all property and assets of the Baath Party were to be seized and transferred to the CPA "for the benefit of the people of Iraq"). Given the circumstance, this order was probably not controversial.

130. Ralph Wilde, *From Trusteeship to Self-Determination and Back Again: The Role of the Hague Regulations in the Evolution of International Trusteeship, and the Framework of Rights and Duties of Occupying Powers*, 31 LOY. L.A. INT'L & COMP. L. REV. 85, 97 (2009).

131. M. SORNARAJAH, *THE INTERNATIONAL LAW ON FOREIGN INVESTMENT* 8-9 (3d ed. 2010).

132. Judith S. Kullberg & William Zimmerman, *Liberal Elites, Socialist Masses, and Problems of Russian Democracy*, 51 WORLD POL. 323, 324 (1999) (writing of polis several years into the Russian reforms and noting that elites liked the system because "[s]upport for liberalism is causally related to the ability of individuals to participate in the new economic order: those who are 'locked out' of the new economy and are constrained by circumstances and context from improving their conditions will be more likely to express antiliberal values and attitudes," but only a small segment of the Russian population dramatically benefited with the fall of the socialist economy, but a majority of the Russian population has been harmed).

133. A percentage of the domestic polity will support capitalist reforms and multinational corporations, particularly those segments that perceive that they will be better off as a result of open market laws or those sectors that assimilate an ideology of favoring the foreign authority or its new economic laws. However, the level of popular support at the time new laws were adopted was likely weak.

134. See Duncan Kennedy, *Shock and Awe Meets Market Shock*, BOSTON REV. (Oct. 1, 2003), available at <http://www.bostonreview.net/world/duncan-kennedy-shock-and-awe-meets-market-shock> (last visited Nov. 21, 2015) (listing the capitalist reforms applied to Iraq and noting that "[e]conomic development is a

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Unlike Iraq, countries possessing actual sovereignty, self-determination, and a voiced citizenry have adopted assorted investment vehicles to protect domestic interests¹³⁵ and have chosen gradualist approaches to liberalization and foreign investment, but the CPA passed Order 39, a six-page law, that “replace[d] all existing foreign investment law” and opened up “all economic sectors in Iraq, except . . . natural resources” to complete foreign ownership.¹³⁶ Order 39 endowed investors with the right to take a 100% ownership interest in Iraqi enterprises or sectors, required no obligation to partner with or structure joint ventures with Iraqi businesses,¹³⁷ and bestowed a rare privilege of plenary “national treatment” so that foreign investors could not be subject to discrimination and would, by law, be treated as domestic businesses.¹³⁸ Despite the fact that it was a CPA directive, section 2 provides: “This Order promotes and safeguards the general welfare and interest of the Iraqi people by promoting foreign investment through the protection of the rights and property of foreign investors in Iraq and the regulation through transparent processes of matters relating to foreign investment in Iraq.”¹³⁹

The CPA’s omnipotence was again on display with CPA Order 39’s categorical certification that the CPA knew Iraqi desires, despite the fact that Iraqis did not select the initiatives or the appropriate role for foreign investment. In fact, local Iraqi businessmen began expressing shortly after the invasion that they were excluded from the political process and that they would be unable to compete with foreign businesses that moved to Iraq,¹⁴⁰ but the Bush administration

dynamic process in which small initial disadvantages often translate into massive permanent inequalities”).

135. See generally SORNARAJAH, *supra* note 131, at 97-99. The three main vehicles for Foreign Direct Investment (FDI) are Greenfield investments, mergers and acquisitions, and joint ventures, and the details of ownership and applicability of taxation, licensing requirements, and other applicable regulations are determined by local laws and relations with local government officials.

136. Foreign Investment Law Order No. 39 of 2003 §§ 3, 6 (CPA, Iraq); Bali, *supra* note 94, at 442; Audi, *supra* note 48, at 346-47.

137. See Foreign Investment Law, *supra* note 136, § 7.

138. *Id.* § 4 (stating that foreign businesses were “entitled to make foreign investments in Iraq on terms no less favorable than those applicable to an Iraqi investor”); Bali, *supra* note 94, at 442 (noting that very few countries permit absolute national treatment for foreign business entities).

139. Foreign Investment Law, *supra* note 136, § 2.

140. See Falsafi, *supra* note 86, at 425 (stating that labor unions suffered in Iraq because the occupation and the new Iraqi government used violence to suppress labor leaders, which is indicative of “the Bush Administration’s disdain for workers’

pushed for an intense implementation of Order 39 by declaring that Iraq was "Open for Business"¹⁴¹ and by initiating programs inside the U.S. that urged American corporations to invest in operations in Iraq.¹⁴² Political patrons of the Bush administration were reportedly directly involved in their own rent seeking activities in Iraq following the invasion.¹⁴³ None of this was serendipitous; the Bush administration specifically planned for and sponsored such reforms with the two thousand page White House *Future of Iraq Project*, which was led by select Iraqi defectors and U.S. government officials who were impaneled for the operations in early 2002, over a year before the invasion.¹⁴⁴

rights, as demonstrated by its aggressive support for oppressive labor laws," and the weak status of labor unions at the time of the invasion); see also Timothy Mills, Panel Response, *Panel 3: The Development of a Market Democracy*, 33 GA. J. INT'L & COMP. L. 195, 196 (2004) (remarking about the author's thirteen trips to Baghdad and meeting with Iraqi businessmen, political leaders, and former government officials, and explaining that stakeholders complained that they were excluded from the political process); Jeff Madrick, *An Extreme Plan for Iraq*, N.Y. TIMES (Oct. 2, 2003), available at <http://www.nytimes.com/2003/10/02/business/02SCEN.html> (last visited Nov. 22, 2015) (stating that the CPA reforms "immediately make Iraq's economy one of the most open to trade and capital flows in the world, and put it among the lowest taxed in the world, rich or poor"). Moreover, the adverse consequences of a rapid and deep foreign investment policy could include a higher unemployment rate and a difficulty in competing with cash-endowed and experienced multinationals.

141. Boon, *supra* note 48, at 533.

142. See generally IRAQ RECONSTRUCTION TASK FORCE, U.S. DEPARTMENT OF COMMERCE, *DOING BUSINESS IN IRAQ: FREQUENTLY ASKED QUESTIONS* (2003); GRANDIN, *supra* note 77, at 261 n.2, (citing Naomi Klein, *Risky Business*, NATION, Jan. 5, 2004) (reporting that the Bush administration offered sub-market price corporate insurance to American companies through the Overseas Private Investment Corporation to further reduce the risk of launching business operations in Iraq).

143. Douglas Jehl, *Washington Insiders' New Firm Consults on Contracts in Iraq*, N.Y. TIMES (Sept. 30, 2003), available at <http://www.nytimes.com/2003/09/30/politics/30LOBB.html> (last visited Nov. 22, 2015) (stating that a group of businessmen, lobbyists, and former assistants to Bush and his father established New Bridge Strategies, a firm that boasts of "being created specifically with the aim of assisting clients to evaluate and take advantage of business opportunities in the Middle East following the conclusion of the U.S.-led war in Iraq"). The founder, Joe Allbaugh, former Bush-Cheney campaign manager, remarked: "Getting the rights to distribute Proctor & Gamble products can be a gold mine . . . One well-stocked 7-Eleven could knock out thirty Iraqi stores; a Wal-Mart could take over the country." Klein, *supra* note 96.

144. Farrah Hassan, *New State Department Releases on the "Future of Iraq" Project*, NAT'L SEC. ARCHIVE (Sept. 1, 2006), available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB198/index.htm> (last visited Nov. 22, 2015); see also Erick Schmitt & Joel Brinkley, *The Struggle for Iraq*:

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CPA Administrator Bremer announced that foreign firms doing business in Iraq would receive 15% to 45% tax breaks¹⁴⁵ and the CPA dropped the top Iraqi corporate tax bracket to 15%, when the pre-invasion rate was 40%.¹⁴⁶ Without restrictions on foreign investment or business operations, U.S. corporations had a pecuniary motive to shift certain operations to Iraq and lower the U.S. tax bill.¹⁴⁷ The *Wall Street Journal* explained that new laws, with virtually no restriction on foreign investment or movement of capital, made Iraq's economy "one of the most open to trade and capital flows in the world, and put it among the lowest taxed in the world, rich or poor."¹⁴⁸ Professor Greg Grandin explained the impact of resource shifting: "[T]he US occupation has imposed on Iraq a massive [U.S.] intervention on behalf of multinationals, insured by US taxpayers and subsidized by the US defense budget."¹⁴⁹

Many foreign corporations reaped staggering profits,¹⁵⁰ particularly entities associated with the U.S. military-industrial

Planning; State Dept. Foresaw Trouble Now Plaguing Iraq, N.Y. TIMES (Oct. 19, 2003), available at <http://www.nytimes.com/2003/10/19/world/struggle-for-iraq-planning-state-dept-study-foresaw-trouble-now-plaguing-iraq.html> (last visited Nov. 22, 2015) (stating that the 13 volumes and over 2,000 pages of the Future of Iraq Project was not released until "several House and Senate committees" had requested them).

145. Klein, *supra* note 57, at 340.

146. Tax Strategy Law Order No. 49 of 2004 explanatory note (CPA, Iraq); see also Tax Strategy Law Order No. 37 of 2003 § 4 (CPA, Iraq); ARNOVE, *supra* note 85, at 17.

147. For example, existing business operations could be commingled (as opposed to new operations that may not have been undertaken "but for" Iraq's new laws) and this opportunity could impact the income statement of US companies or reduce the U.S. tax bill if profits were retained in offshore accounts. See Joshua Smith & Thomas L. Hungerford, *Cutting Tax Rates Not the Answer: Opposing View*, USA TODAY (May 1, 2014, 8:20 PM), available at <http://www.usatoday.com/story/opinion/2014/05/01/pfizer-corporate-tax-economic-policy-institute-editorials-debates/8583713/> (last visited Nov. 22, 2015). See also, *Corporate Tax Rates Table*, KPMG, available at <https://home.kpmg.com/xx/en/home/services/tax/tax-tools-and-resources/tax-rates-online/corporate-tax-rates-table.html> (last visited Nov. 22, 2015).

148. Madrick, *supra* note 84; see also Kennedy, *supra* note 134 (noting the Washington Consensus prescriptions on Iraq and the interest in foreign investment if MNCs expect highly profitable returns and an ability to remove profits from the country).

149. GRANDIN, *supra* note 77, at 159-60.

150. Bali, *supra* note 94, at 443.

complex,¹⁵¹ and there was no constraint on repatriation of profits.¹⁵² The system of corporate benefit was called “war profiteering,”¹⁵³ but apparently from the perspective of the Bush administration, negative reverberations were regarded as inconsequential or legitimate consequences of the CPA’s economic ultimatums. Professor Gathii remarks:

In seeking to remake Iraq into the most idealistic type of free market economy, the United States has placed the interests of its leading multinational corporations at the forefront in transforming public and private wealth into engines of new profit for the United States. Thus, the apparently enlightened occupier mission of ending a dictatorial regime by replacing it with idealistic visions of free markets and liberal democracy may be nothing more than an excuse to legitimate new forms of oppression in Iraq.¹⁵⁴

Order 39 and the CPA’s attempted privatization agenda were overwhelmingly rejected by Iraqis, including by members of the IGC at the time of adoption,¹⁵⁵ and Order 39 could have been perceived as a violation of international law because the Hague Regulations mandate occupying powers to protect, safeguard, and administer the occupied territory in accordance with the rules of usufruct.¹⁵⁶ Nonetheless, the

151. CONRAD MOLDEN, WHAT WERE THE CONSEQUENCES OF THE IRAQ WAR CONTRACTS?: FROM EISENHOWER’S WARNINGS TO HALLIBURTON’S PROFITS 11-12 (2012).

152. Foreign Investment Law, *supra* note 136, art. 7(2)(d) (investors can “transfer abroad without delay all funds associated with its foreign investment,” including profits and sale of the foreign investment); GRANDIN, *supra* note 77, at 159 (stating that foreign corporations were given the right to “unlimited repatriation of profits”); Adam Roberts, *Transformative Military Occupation: Applying the Laws of War and Human Rights*, 100 AM. J. INT’L L. 580, 615 (2006) (stating that Order No. 39 did not require reinvesting profits into the country).

153. See Kevin J. Wilkinson, *More Effective Procurement Response to Disasters: Maximizing the Extraordinary Flexibilities of IDIQ Contracting*, 59 A.F. L. REV. 231, 240 (2007).

154. Gathii, *supra* note 123, at 512-13.

155. See *id.* at 736; see also Audi, *supra* note 48, at 355; Chip Cummins, *State-Run Oil Company Is Being Weighed for Iraq*, WALL ST. J. (Jan. 7, 2004, 11:37 PM), available at <http://www.wsj.com/articles/SB107343427082371300> (last visited Nov. 22, 2015) (stating that there are “political sensitivities about foreign interference in the oil sector” and that the intentions of Iraq’s leaders have inflamed many inside Iraq).

156. Hague Regulations, *supra* note 120, art. 55; Naomi Klein, *Bring Halliburton Home*, NATION (Nov. 6, 2003), available at <http://www.thenation.com/article/bring-halliburton-home> (last visited Nov. 22, 2015) (stating that Bremer’s reforms were illegal with the Security Council

foreign profiteering still occurred and TAL provisions were still operative after the CPA dissolved. Granted, overturning TAL provisions would have been conceivable through legislative reform (after a two-thirds vote of parliament and the authorization of the cabinet),¹⁵⁷ judicial processes, or systematic transnational public law litigation,¹⁵⁸ but invalidating or materially altering the occupation's institutions and influence can become more difficult after a new status quo has been set, the foreign military enforces the occupation, new rights become entrenched, and more time passes,¹⁵⁹ particularly when Iraqis were more concerned with survival during civil war-like conditions than with overturning CPA ultimatums.¹⁶⁰ Property rights can be directly enforceable and may have permanence by socialization and the advocacy interests of new respective owners and similarly situated stakeholders.

C. Constitutionally Locking in Reforms

International law and Iraqi law could have permitted overturning CPA reforms and imposing liability,¹⁶¹ but these rights

specifying the applicability of The Hague Regulations and the Geneva Conventions).

157. Juhasz, *supra* note 115.

158. See generally Harold Hongju Koh, *Transnational Public Law Litigation*, 100 YALE L. J. 2347 (1991); see also Anne-Marie Slaughter & David Bosco, *Plaintiffs Diplomacy*, 2002 FOREIGN AFF. 102 (1991).

159. Bali, *supra* note 94, at 443. Order 39 was repealed, but, while still under occupation, the new Iraqi government enacted a National Investment Law that provided a tax free status for U.S. foreign direct investment in Iraq. *Iraq MPs Pass Law to Encourage Foreign Investment*, FINANZNACHRICHTEN (Oct. 10, 2006, 5:10 PM), available at <http://www.finanznachrichten.de/nachrichten-2006-10/7117497-iraq-mps-pass-law-to-encourage-foreign-investment-020.htm> (last visited Nov. 22, 2015).

160. One can assuredly remonstrate that there was a representative government at the time the Constitution was adopted, which means that Iraqi democratic will could have curbed disputatious provisions from being incorporated into the Constitution, but one can also rebut that the Iraqi public intention was probably more transfixed on survival as the country was consumed by violence and near-civil war conditions. See generally Robert Bejesky, *A Ripe Foundation for the Formation of ISIS: Tit-for-Tat Hostilities and Contingently Contained Violence* (unpublished manuscript) (on file with the Syracuse Journal of International Law and Commerce).

161. Fourth Geneva Convention, *supra* note 128, art. 47 (providing that occupied inhabitants are protected and "shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as a result of the occupation"); Law of Administration, *supra* note 117, art. 22 ("If, in the course of his work, an official of any government office . . . or the local administrations, deprives an individual or a group of the rights guaranteed by this Law or any other Iraqi laws in force, this individual or group shall have the right to maintain a cause of action."); Theodore W. Kassinger & Dylan J. Williams,

can be pitted against other constitutional rights and interests.¹⁶² Iraq's constitutional provisions, which were actually predominately embodied in the CPA's TAL, were later codified in the Iraqi Constitution with notable U.S. exhortation.¹⁶³

Provisions governing economic activity and ordering are explicit in the Iraqi Constitution even though many of the principles would normally comprise interpretable policy issues in consolidated democracies.¹⁶⁴ Article 25 of the Iraqi Constitution affirms that the "State shall guarantee the reform of the Iraqi economy in accordance with modern economic principles to insure full investment of its resources, diversification of its sources, and the encouragement and development of the private sector."¹⁶⁵ Article 26 accentuates that the "State shall guarantee the encouragement of investment in the various sectors, and this shall be regulated by law."¹⁶⁶ Article 23, when viewed in conjunction with restrictions on expropriation and protection for property rights¹⁶⁷ and "national treatment" laws, incorporates commanding protection for foreign investment. These provisions that sanctify capitalism and private sector investment, are included under "Section Two: Rights and Liberties" of the Iraqi

Commercial Law Reform Issues in the Reconstruction of Iraq, 33 GA. J. INT'L & COMP. L. 217, 218 (2004) (stating that the Geneva rules are customary international law and have been signed by all parties involved).

162. Article 44, *Dustūr Jumhūrīyat al-'Irāq* [The Constitution of the Republic of Iraq] of 2005 ("There may not be a restriction or limit on the practice of any rights or liberties in this constitution, except by law or on the basis of it, and insofar as that limitation or restriction does not violates the essence of the right or freedom.").

163. Robert Bejesky, *CPA Dictates on Iraq: Not an Update to the Customary International Law of Occupation but the Nucleus of Blowback with the Emergence of ISIS*, 42 SYRACUSE J. INT'L L. & COM. 273, 305-06 (2015).

164. For example, there is a drastic distinction in the language of the US Constitution which does sanctify "property rights," but only in Amendment V, which only applies to government expropriation. U.S. CONST. amend. V ("No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.").

165. Article 25, *Dustūr Jumhūrīyat al-'Irāq* [The Constitution of the Republic of Iraq] of 2005.

166. *Id.* art. 26.

167. *See id.* art. 23 ("Private property is protected . . . Expropriation is not permissible except for the purposes of public benefit in return for just compensation, and this shall be regulated by law."). International law seemingly requires fair value for expropriation, but there has been disagreement over measuring compensation. *See* G.A. Res. 3281 (XXIX), art. 2, § 2(c) (Dec. 12, 1974) (emphasizing precedent for the freedom of nationalization and expropriation and that compensation is freely assessed domestically as a principle of sovereignty). *See generally* SORNARAJAH, *supra* note 131, at 414-18.

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Constitution and are perversely comingled with other rights, such as the right to life, liberty, and political freedom,¹⁶⁸ as the supreme foundational source of law and fundamental right, calculated to prevail over subsequent legislative agendas.¹⁶⁹

Perhaps the most polemical progression and the one that was pillared on the sequence of deepening reforms was the robust advocacy to revamp Iraq's oil industry. Iraqi defectors and CPA appointees offered periodic public statements endorsing privatization of Iraq's nationalized oil industry¹⁷⁰ and this advocacy became a source of evidence for those who contended that the Iraq War was driven by interest in Iraqi oil.¹⁷¹ Security Council Resolution 1546 affirmed "the right of the Iraqi people freely to determine their own political future and control their own natural resources,"¹⁷² but Article 112 of the Iraqi Constitution states that the government "shall . . . formulate the necessary strategic policies to develop the oil and gas

168. See Articles 14-46, *Dustūr Jumhūriyat al-'Irāq* [The Constitution of the Republic of Iraq] of 2005 (the articles that comprise "Section Two: Rights and Liberties" of the Iraqi Constitution).

169. See *id.* art. 2 ("No law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution."); see, e.g., *Marbury v. Madison*, 5 U.S. 137, 177 (1803) ("It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or that the legislature may alter the constitution by an ordinary act."); see Tom Ginsburg, *Locking in Democracy: Constitutions, Commitment, and International Law*, 38 N.Y.U. J. INT'L L. & POL. 707, 710 (2006) (discussing the binding nature of constitutional provisions to "restrict the actions available to future politicians").

170. See Bejesky, *Geopolitics*, *supra* note 16, at 219, 229-32, 245, 249; see also Sammy Ketz, *Iraq's Planning Minister Wants to Slash Public Sector Workforce*, DAILY STAR (Nov. 10, 2008, 12:00 AM), available at <http://www.dailystar.com.lb/Business/Middle-East/2008/Nov-10/82371-iraqs-planning-minster-wants-to-slash-public-sector-workforce.ashx#axzz3DXQ6vbIz> (last visited Nov. 22, 2015) (noting that Ali Baban, Iraq's planning minister, contended that the oil and other industries were entirely suitable for full privatization).

171. See Bejesky, *Geopolitics*, *supra* note 16, at 209, 226-27. Federal Reserve Chairman Alan Greenspan stated that "the Iraq war [was] largely about oil." Bob Woodward, *Greenspan: Ouster of Hussein Crucial for Oil Security*, WASH. POST (Sept. 17, 2007), available at http://www.washingtonpost.com/wp-dyn/content/article/2007/09/16/AR2007091601287_pf.html (last visited Nov. 22, 2015). When asked to elucidate, Greenspan responded that Saddam Hussein's "behavior" posed a threat to regional oil supplies. See *Alan Greenspan vs. Naomi Klein on the Iraq War, Bush's Tax Cuts, Economic Populism, Crony Capitalism and More*, DEMOCRACY NOW! (Sept. 24, 2007), http://www.democracynow.org/2007/9/24/alan_greenspan_vs_naomi_klein_on (last visited Nov. 22, 2015). Greenspan never described what that recent "behavior" was in relation to the reasons for war.

172. S.C. Res. 1546, pmbl. (June 8, 2004).

wealth in a way that achieves the highest benefit to the Iraqi people using the most advanced techniques of the market principles and encouraging investment.”¹⁷³ Given that Iraqis were cash poor because of the state of their economy during the invasion and occupation, “encouraging investment” by default presumably meant foreign investment. Shortly after the invasion, American and British oil conglomerates began to entrench themselves in Iraq but waited for four years to finally procure official exploitation rights.¹⁷⁴ In a December 2005 agreement with the IMF, Iraq committed itself to drafting a new petroleum law by the end of 2006 so that foreign oil companies could invest in Iraq.¹⁷⁵ By 2008, multinational oil companies began to be recipients of long-term licenses to exploit Iraqi oil fields through Production Sharing Agreements.¹⁷⁶ In 2013, CNN reported, “[T]he Iraq War was a war for oil, and it was a war with winners: Big Oil.”¹⁷⁷

D. A Fine Example of the “Rule of Law”: Dollarizing the Iraqi Economy

The CPA may have been able to so handily dictate unbounded capitalist reforms because of the practical and psychological humanitarian dependence that stemmed from the CPA’s monetary policy. The authority to manage an occupied country’s financial, commercial, and economic system is not authorized in the Hague Regulations,¹⁷⁸ but the CPA initiated a system to provide liquidity to

173. Article 112, § 2, *Dustūr Jumhūrīyat al-‘Irāq* [The Constitution of the Republic of Iraq] of 2005.

174. See Mekay, *supra* note 63 (stating that there were hundreds of Americans working in Iraqi government agencies and that they worked to give “full access for U.S. companies to the nation’s oil reserves”).

175. Joshua Gallu, *The Race For Iraq’s Resources: Will Iraq’s Oil Blessing Become a Curse?*, SPIEGEL ONLINE (Dec. 22, 2006, 3:46 PM), available at <http://www.spiegel.de/international/the-race-for-iraq-s-resources-will-iraq-s-oil-blessing-become-a-curse-a-456212.html> (last visited Nov. 22, 2015). The Bush administration was so interested that the USAID contracted with BearingPoint to draft proposals for Iraq’s new law. See generally BEARINGPOINT, *OPTIONS FOR DEVELOPING A LONG TERM SUSTAINABLE IRAQI OIL INDUSTRY* (2003).

176. See Bejesky, *Geopolitics*, *supra* note 16, at 224-25, 240-41, 249-50.

177. Juhasz, *supra* note 25.

178. See JAMES A. TYNER, *THE BUSINESS OF WAR: WORKERS, WARRIORS AND HOSTAGES IN OCCUPIED IRAQ* 82 (2006); see also LAURENCE BOISSON DE CHAZOURNES, *TAKING THE INTERNATIONAL RULE OF LAW SERIOUSLY: ECONOMIC*

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the Iraqi economy by having the U.S. Federal Reserve Bank physically transport U.S. currency to the CPA and inject the legal tender into the Iraqi economy.¹⁷⁹ Most of the physical U.S. dollar transfers were drawn from the Development Fund for Iraq (“DFI”), which the CPA constituted and controlled¹⁸⁰ as the successor to the U.N. Oil for Food Program.¹⁸¹ By June 28, 2004, the date the CPA transferred authority to the interim Iraqi government, U.S. officials had disbursed \$20.7 billion into the Iraqi economy, of which \$12 billion was provided in cash, and some of those disbursements set records as the largest U.S. Federal Reserve cash payouts in history.¹⁸²

The monetary value belonged to Iraqis, but the CPA distributed U.S. dollars like a parent dispensing an allowance to a child,¹⁸³ breeding a dependence on the currency for routine and everyday transactions.¹⁸⁴ Iraq had three alternative circulating currencies with different exchange rates,¹⁸⁵ but the high-value of crisp, new U.S. hundred dollar bills bred frenzy and imparted a favorable symbol of the occupation and likely made the U.S. dollar the de facto currency,¹⁸⁶ which was a particularly ironic twist because Hussein’s

INSTRUMENTS AND COLLECTIVE SECURITY 11-12 (2005).

179. See Memorandum from the Majority Staff on Cash Transfers to the Coalition Provisional Authority to the House of Representatives Comm. on Oversight and Gov’t Reform I (Feb. 6, 2007) [hereinafter HR Committee on Oversight and Government Reform].

180. See Hmoud, *supra* note 64, at 449-50.

181. HR Committee on Oversight and Government Reform, *supra* note 179, at 1.

182. *Id.* at 1, 4, 5-6. Several of these shipments (\$1.5 billion on Dec. 23, 2003, \$2.4 billion on June 18, 2003, and \$1.6 billion on June 25, 2003) were the “largest pay out[s] of U.S. currency in Fed history.” *Id.* at 6-7.

183. See Mills, *supra* note 140, at 208 (US government funding salaries and utility needs); Melissa Patterson, *Who’s Got the Title? Or, The Remnants of Debellatio in Post-Invasion Iraq*, 47 HARV. INT’L L.J. 467, 471 (2006).

184. CPA fiscal transactions may have set the groundwork for imposed reforms and an open economy because transactions involving payment for government salaries and goods and services rendered inside Iraq and payments to external recipients could be made in US currency or denominated in US dollars for international transactions.

185. New Iraqi Dinar Banknotes Law Order No. 43 of 2003 § 1 (CPA, Iraq) (listing the “Swiss dinar” (1959-89), “1990 dinar,” and the “New Iraqi dinar,” all of which had different “Official Conversion Rates” but that the goal was to get to only using the “New Iraqi dinar”).

186. CPA official Frank Willis testified to Congress and stated that a “‘wild west’ atmosphere prevailed and the country was awash in brand new \$100 bills.” HR Committee on Oversight and Government Reform, *supra* note 179, at 13 (citing Testimony of Frank Willis, *An Oversight Hearing on Waste, Fraud and Abuse in*

regime went off the U.S. dollar three years earlier as a hard currency for denominating oil sales in favor of the Euro.¹⁸⁷ U.S. currency represented buying power for the flood of new high-technology gadgets and consumer goods, which were previously restricted imports, not because of the lack of a currency, but because of sanctions and poverty.¹⁸⁸

With the humanitarian disaster and lack of a tangible commodity-backed or hard currency, the U.S. dollar's full faith and credit served as the basis of currency stability. Alan Greenspan, Federal Reserve Chairman at the time U.S. Federal Reserve payouts were made, later remarked:

[W]hat we were involved in was essentially endeavoring to create a viable currency for the Central Bank of Iraq. And what we did do was - I think very successfully - create what is a viable financial system, even under the circumstances that currently exist. There was, as far as I can judge, a huge drain of the resources into areas that nobody to this day can understand or follow.¹⁸⁹

U.S. Government Contracting in Iraq, Senate Democratic Policy Committee Hearing (Feb. 14, 2005)). US \$100 bills were juxtaposed with the comparatively weak value of other currencies and symbolized Iraqi economic and social viability when the country had been facing hardship. \$100 bills served as a daily reminder of the occupation (as the US dollar was the same currency used by the nation of the occupying force) and more prosperity even though the standard of living could have increased threefold overnight by simply dropping the restrictions on oil sales. Likewise, there would also be an emotive psychological impact with currency containing Saddam Hussein's image. By contrast, Iraqi banknotes, which were denominated at a highest value of 250 Iraqi dinar, worth approximately sixteen cents, required a "brick-like" stack of bills for purchasing daily necessities. Hamoudi, *supra* note 97, at 531. The need to eliminate old currencies because of their low value is predominantly due to the fact that Iraq's economy had been destroyed for over a decade but was suddenly opened to international financial transactions, currencies possess a foreign exchange value with an open economy, there was purchasing power parity with international transactions, and the central bank (under the direction of the current occupational authority) set monetary policy.

187. Faisal Islam, *Iraq Nets Handsome Profit by Dumping Dollar for Euro*, *GUARDIAN* (Feb. 15, 2003, 8:55 PM), available at <http://www.theguardian.com/business/2003/feb/16/iraq.theeuro> (last visited Nov. 22, 2015).

188. Mills, *supra* note 140, at 204. While the imported products had long existed, the drastic change in trade (under military occupation), may have made it appear that it was the US that brought such opportunities.

189. "Mr. Greenspan is Flat Wrong": Pulitzer Prize-Winning Journalists Respond to Alan Greenspan's Claim that He Didn't Know About Federal Reserve's Role in Iraq's Missing Billions, *DEMOCRACY NOW!* (Oct. 9, 2007), available at http://www.democracynow.org/2007/10/9/mr_greenspan_is_flat_wrong_pulitzer (last visited Dec. 1, 2015) Ambassador Timothy Carney remarked: "[A] capable

Greenspan's reference to a "huge drain on the resources" might have been attributable to the CPA's mode of cash distribution. Both the U.N. resolution that created the DFI and CPA rules governing the DFI specified that funds were required to be distributed "in a transparent manner to meet the humanitarian needs of the Iraqi people . . . and for other purposes benefiting the people of Iraq."¹⁹⁰ At the heart of congressional investigations in September 2007 was the location of the Federal Reserve's \$12 billion in physical cash allocations after it was delivered to the CPA.¹⁹¹ Congressional investigations revealed that the CPA compensated recipients with duffel bags stuffed with cash, that trucks carried off loads of cash, that cash was stolen out of vaults, and that "ghost" employees were being paid.¹⁹²

U.N. Resolution 1483 required that Iraq's funds be "audited by [an approved] independent public accountant]"¹⁹³ and CPA rule

U.S. Treasury team worked out an emergency scheme for [Iraqi] government workers – and I became one of the deliverymen [for cash payments]. Without a functioning banking system, cash was the only way to inject money into the economy." HR Committee on Oversight and Government Reform, *supra* note 179, at 14.

190. S.C. Res. 1483, *supra* note 93, ¶ 14; *see also* S.C. Res. 1511, ¶¶ 23-24 (Oct. 16, 2003) ("Emphasizes that the International Advisory and Monitoring Board (IAMB) referred to in paragraph 12 of resolution 1483 (2003) should be established as a priority, and reiterates that the Development Fund for Iraq shall be used in a transparent manner as set out in paragraph 14 of resolution 1483 (2003)"); HR Committee on Oversight and Government Reform, *supra* note 179, at 2 (emphasizing that CPA officials were fully cognizant that DFI funds were required to be transferred in a transparent manner).

191. HR Committee on Oversight and Government Reform, *supra* note 179, at 1; *The Impact of CPA Decision making on Iraq Reconstruction: Hearing Before the H. Comm. on Oversight and Gov't Reform*, 110th Cong. 18 (2007) (noting that up to \$20 billion could have been unaccounted for).

192. HR Committee on Oversight and Government Reform, *supra* note 179, at 2; *see also id.* at 2 ("The failure to account for the \$20 billion expended by the CPA appears to have had serious consequences. Many of the funds appear to have been lost to corruption and waste. According to the Inspector General, thousands of 'ghost employees' were receiving paychecks from Iraqi ministries under CPA's control."); *Id.* at 13 (reporting that Frank Willis testified that "when contractors needed to be paid by the CPA, they were told to 'bring a big bag' for cash payment" (citing Interview of Frank Willis, House Committee on Government Reform, Minority Staff (Jan. 27, 2005)); SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION, *HARD LESSONS: THE IRAQ RECONSTRUCTION EXPERIENCE* 155 (2009) ("CPA failed to enforce adequate management, financial, and contractual controls over approximately \$8.8 billion of DFI money.").

193. S.C. Res. 1483, *supra* note 93, ¶ 12.

number 2 also stated that it would secure the “services of an independent, certified public accounting firm.”¹⁹⁴ The CPA did not hire a “certified public accounting firm,”¹⁹⁵ and post-occupation audits discovered that there were hundreds of instances of inadequate controls and disbursements to unverifiable recipients and for non-existent contracts, contractors, and projects.¹⁹⁶ The Inspector General for Iraq Reconstruction report remarked that “proper cash accountability was not maintained, physical security was inadequate, fund agent records were not complete, and fund managers’ responsibilities and liabilities were not properly assigned.”¹⁹⁷

Billions of dollars in Iraqi public money, which the CPA was required to allocate in a consuetudine accordant with the fiduciary obligations of an occupier, could not be accounted for.¹⁹⁸ There was hypocrisy; federal criminal charges were filed against individuals suspected of taking bribes and engaging in other criminal misconduct while the U.N. administered the pre-2003 Oil for Food Program¹⁹⁹ and

194. HR Committee on Oversight and Government Reform, *supra* note 179, at 10 (citing CPA, *Regulation Number 2: Development Fund for Iraq* (June 10, 2003)).

195. HR Committee on Oversight and Government Reform, *supra* note 179, at 11 (stating that the CPA did not hire “a certified public accounting firm,” but instead paid \$1.4 million to a company called North Star Consultants that operated out of a private residence in San Diego, and reporting that the Inspector General for Iraq Reconstruction noted that North Star never performed this work). Bremer also, through Regulation Number 3, created a Program Review Board, which was required to report directly to Bremer, and be “responsible for recommending expenditures of resources from the Development Fund for Iraq and other resources . . .” Program Review Board Regulation No. 3 of 2003 § 6 (CPA, Iraq).

196. SIGIR, REPORT NO. 05-004, AUDIT REPORT: OVERSIGHT OF FUNDS PROVIDED TO IRAQI MINISTRIES THROUGH THE NATIONAL BUDGET PROCESS, 7 (Jan. 30, 2005) [hereinafter SIGIR, AUDIT REPORT].

197. HR Committee on Oversight and Government Reform, *supra* note 179, at 13 (citing SIGIR, AUDIT REPORT).

198. HR Committee on Oversight and Government Reform, *supra* note 179, at 18.

199. In 2005, U.S. officials initiated U.S. federal criminal charge investigations against U.N. officials for criminal misconduct, including for accepting “bribes,” in the pre-2003 U.N. Secretary-General administered oil-for-food program. See John R. Crook, *Further U.S. Reactions to Abuses in UN Oil-for-Food Program; U.S. Criminal Charges Against UN Officials, Others*, 99 AM. J. INT’L L. 904 (2005); Russell P. McAleavey, Note, *Pressuring Sudan: The Prospect of an Oil-For-Food Program for Darfur*, 31 FORDHAM INT’L L.J. 1058, 1088-89 (2008). In November 2007, Chevron was ordered to pay \$30 million in criminal and civil penalties for kickbacks under the U.N. Oil for Food Program. See Michael B. Bixby, *The Lion Awakens: The Foreign Corrupt Practices Act – 1977 to 2010*, 12 SAN DIEGO INT’L L.J. 89, 108 (2010). For example, Aleksandr Yakovlev pled guilty to U.S. federal charges of money laundering, conspiracy, and wire fraud for reportedly receiving

the CPA created the Iraqi Commission on Public Integrity that was focused on investigating historical corruption of Hussein's regime,²⁰⁰ but CPA officials overtly stated that they believed that their fiscal obligations should be above reproach because their goal was to inject money into the economy.²⁰¹ The CPA certainly should not have been above reproach because investigations eventually led a former CPA official to plead guilty to multiple felony counts for stealing millions of dollars in cash.²⁰²

Another predicament is that the CPA had just stripped hundreds of thousands of employees out of the Iraqi government for Ba'ath Party association and dismantled the Iraqi military apparatus,

several hundred thousand dollars in bribes. Colum Lynch, *Oil-Food Official Pleads Guilty*, WASH. POST (Aug. 9, 2005), available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/08/08/AR2005080800150.html> (last visited Dec. 3, 2015).

200. Corruption was not completely overlooked because a January 2004 CPA Order created the Iraqi Commission on Public Integrity, which had a mission to adopt and enforce anti-corruption and government accountability measures, but the Commission was apparently unconcerned with current instances of corruption since they set the jurisdiction for this new entity to trace back possible instances of corruption to July 17, 1968. Delegation of Authority Regarding The Iraq Commission on Public Integrity Order No. 55 of 2004 §§ 3-4 (CPA, Iraq).

201. David Oliver, the head of finance for the CPA, remarked: "I have no idea, I can't tell you whether or not the money went to the right things or didn't—nor do I actually think it is important." Mark Gregory, *Baghdad's 'Missing' Billions*, BBC (Nov. 9, 2006), available at <http://news.bbc.co.uk/2/hi/business/6129612.stm> (last visited Dec. 3, 2015). After the interviewer criticized Oliver for his callous attitude, Oliver remarked: "Billions of dollars of their money disappeared, yes I understand, I'm saying what difference does it make?" *Id.* Oliver claimed that he gave uncertain amounts of cash to the Iraqi government and because nothing was left, the allocations must have been provided to the right people. *Id.* Most countries have (or aspire to improve) accounting systems that require audits of corporations and governmental entities to ensure integrity of the accounting process, to protect public interests, and to prevent white-collar crimes from occurring, but the CPA disbursal process seemed to be rather rudimentary and without protections that would instill integrity. Towards a New Era in Government Accounting and Reporting, PwC 3, 14 (Apr. 2013), available at <http://www.pwc.com/gx/en/psrc/publications/assets/pwc-global—ipsas-survey-government-accounting-and-reporting-pdf.pdf> (last visited Dec. 9, 2015) (assessing in a survey of 100 countries that there needs to be "[b]etter integration and comparability in government accounting systems" but "[t]he G20 has recently emphasized the need for transparent, comparable public sector financial reporting, including public sector balance sheets" and for "sound, transparent accounting systems" in order to restore confidence and having sustainable financial management).

202. Charles R. Babcock, *Contractor Fraud Trial to Begin Tomorrow*, WASH. POST (Feb. 13, 2006), available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/02/12/AR2006021200732.html> (last visited Dec. 3, 2015).

which meant that the only semblance of *government* was the CPA and the U.S.-appointed heads of ministry and appointed members of Iraqi interim governments.²⁰³ During the CPA's tenure and up until the date that the CPA authority expired, the CPA distributed billions of dollars in cash to its appointees.²⁰⁴ Congressman Henry Waxman presided over investigations and remarked: "The CPA handed over \$8.8 billion in cash to the Iraqi government even though that new government had no security or accounting system. No one can account for it."²⁰⁵ Not to denote that this unequivocally transpired, but perhaps it is no wonder that the appointed interim Iraqi government permitted the CPA to do whatever it wanted; giving billions of dollars in cash would ostensibly be one of the most straightforward methods of illegally bribing or at least arousing loyalty from appointees.²⁰⁶ The money belonged to the people of Iraq as a whole,²⁰⁷ but currency might also just vanish and not effectively stimulate the economy despite the humanitarian need.²⁰⁸

203. DILIP HIRO, SECRETS AND LIES 312-13 (2003). Resolution 1483 required disbursement of funds under the Development Fund for Iraq in "coordination" or "consultation" with the governance authority, which would officially become the IGC in October 2003. S.C. Res. 1483, *supra* note 93, ¶¶ 13-14, 16(b); *see also* S.C. Res. 1511, *supra* note 190, ¶¶ 23-24.

204. The CPA was apparently having so much fun distributing pallets of bundled \$100 bills without consequence or documentation that it requested another \$1 billion from the Federal Reserve just hours after its official authority expired. HR Committee on Oversight and Government Reform, *supra* note 179, at 9. Thankfully, the request was denied by the Federal Reserve because "the CPA no longer had control over Iraq's assets." *Id.*

205. Gregory, *supra* note 201.

206. The CPA actions may very well fall into the jurisdiction of a number of international agreements that prohibit bribery of public officials and seek to prevent corruption. *See* Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, S. TREATY DOC. NO. 105-43 (1998); Inter-American Convention on Corruption, Mar. 29, 1996, S. TREATY DOC. NO. 105-39 (1998); Council of Europe Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. NO. 173; G.A. Res. 58/4 Convention Against Corruption (Oct. 31, 2003).

207. Government employees, private sector entities, and organizations, could not be paid from what was earmarked as Iraq's own revenues unless the CPA made payments in US dollars. Charles Tiefer, *The Iraq Debacle: The Rise and Fall of Procurement-Aided Unilateralism as a Paradigm of Foreign War*, 29 U. PA. J. INT'L L. 1, 45-46 (2007). In fact, the impropriety was even more direct as Ahmed Chalabi, the Iraqi exile instrumental in producing fabricating witnesses prior to the invasion, and his group became the direct recipients of funding when they established the Iraqi Reconstruction and Development Council. *Id.* at 44.

208. The adverse consequence of "dollarizing" the Iraqi economy, not implementing accounting controls, and being unable to locate billions of dollars,

The next part considers the impact of occupation construction activities. The part untangles the significance of Iraq's debt-stricken financial status in conjunction with multinational cost of reconstruction in section A, addresses the details of no-bid contracts granted by the U.S. government in section B, presents instances of fraud and greed that increased the cost to U.S. taxpayers in section C, and accents the U.S. military's role in securing the reconstruction process in section D. In short, resources shifted to construction projects that benefited multinationals while burdening Iraqis with high cost and lower employment and encumbered American taxpayers with additional spending.

V. CONSTRUCTION CONTRACTS

A. *Obligation to Rebuild and the Financing of Construction*

Perhaps implicitly conducted pursuant to a moral and international law obligation to repair or replace what was destroyed during war,²⁰⁹ U.S. authorities undertook projects to rebuild infrastructure that was damaged by bombing operations during the 1991 Gulf War and the 2003 invasion.²¹⁰ Experts estimated that construction would cost between \$55 and \$90 billion.²¹¹ Over 150 companies²¹² received \$21 billion for construction projects and as

would be unlikely to protect against the possibility of bundles of cash being stashed or otherwise removed from the economy instead of being spent to stimulate the economy. This is also a breeding ground of corruption because political appointees could be persuaded by financial gain or be particularly amenable to the occupation's dictates, despite broadly-based and opposing public desires. The occupation authorities were operating like a bank and payroll officer for payees in a country in which the vast majority of the population was impoverished and in dire need of services.

209. See generally INT'L COMM'N ON INTERVENTION & STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT xi, 11, 39-42 (2001) (setting forth standards for post-conflict situations, noting that the international community must support the intervention, and emphasizing that the intervener [and perhaps the international community] has a "responsibility to rebuild" what was destroyed during war).

210. Bali, *supra* note 94, at 442.

211. *Rebuilding Iraq 'Will Cost \$55bn.'* BBC (Oct. 3, 2003, 1:17 PM), available at <http://news.bbc.co.uk/2/hi/business/3160800.stm> (last visited Dec. 4, 2015) (referring to the \$55 billion World Bank estimate and the \$90 billion estimate by McKinsey consulting).

212. *Blood and Oil: How the West Will Profit From Iraq's Most Precious Commodity*, INDEPENDENT (Oct. 22, 2011), available at <http://www.independent.co.uk/news/world/middle-east/blood-and-oil-how-the-west-will-profit-from-iraqs-most-precious-commodity-431119.html> (last visited

much as \$117 billion for security objectives related to reconstruction,²¹³ which was a sum that was several times Iraq's GDP in 2004.²¹⁴ Funding came from U.S. taxpayers, loans,²¹⁵ and Iraqi oil revenues.²¹⁶

Iraq required tremendous investment because the country lacked capital for reconstruction and had accumulated massive debt from previous wars, sovereign obligations undertaken by Hussein's regime, and the ridiculously excessive level of debt (up to \$350 billion) imposed as damages by the Security Council following the invasion of Kuwait.²¹⁷ Prior to the invasion in 2003, Iraq was unable to service existing debt obligations because Security Council restrictions prohibited oil exports starting in the early-1990s and there were revenue limits imposed by the U.N. Oil for Food Program. Emphasizing how Iraq's massive existing debt could undermine reforms,²¹⁸ Joseph Stiglitz remarked that Iraq was facing further

Dec. 4, 2015).

213. SIGIR, *supra* note 2, at 9. \$117 billion is the difference between the estimate of \$138 billion and \$22 billion. Anna Fifield, *Contractors Reap \$138B From Iraq War*, CNN (Mar. 19, 2013), available at <http://edition.cnn.com/2013/03/19/business/iraq-war-contractors/> (last visited Dec. 4, 2015) (noting that \$138 billion was spent on "private security, logistics and reconstruction contracts"). However, this number could be much higher if one assumes that reconstruction was a critical precondition to alleviating hostilities within the Iraqi population and ending the occupation and if it is assumed that U.S. military operations were also critical to the security of reconstruction.

214. *Donor Activities and Civil Society Potential in Iraq*, U.S. INST. PEACE (July 2004), available at <http://www.usip.org/sites/default/files/sr124.pdf> (last visited Dec. 4, 2015) (stating that Iraq's GDP was approximately \$19 billion in 2004).

215. See generally ARNOVE, *supra* note 85, at 74; see also IN THE NAME OF DEMOCRACY: AMERICAN WAR CRIMES IN IRAQ AND BEYOND 63 (Jeremy Brecher, Jill Cutler & Brendan Smith eds., 2005) [hereinafter IN THE NAME OF DEMOCRACY]; Juhasz, *supra* note 115 (reporting that through mid-January 2007, U.S. taxpayers had already provided \$50 billion in loans to reconstruct Iraq and that these expenditures were allocated to U.S. companies and banking interests).

216. Hmoud, *supra* note 64, at 450 (discussing that the CPA assumed control over the Oil-for-Food Program from the UN and that the new program, called the Development Fund for Iraq could be disbursed for "humanitarian needs, repair of Iraq's infrastructure, disarmament, economic reconstruction, and the costs of Iraqi civilian administration.").

217. Bejesky, *Currency Cooperation*, *supra* note 59, at 100-02 (noting that Kuwaitis filed 2.68 million claims, seeking more than \$350 billion in compensation, when Kuwait's annual GDP averaged \$41.3 billion).

218. Shortly after the 2003 invasion, Iraqis found themselves in a position similar to that faced by the three-decade-long debt crisis that still plagues developing countries. See generally NAT'L BUREAU OF ECON. RESEARCH, DEVELOPING COUNTRY DEBT AND THE WORLD ECONOMY (Jeffrey D. Sachs ed., 2007).

economic travail by “[p]iling more debt onto Iraq’s already huge obligations” and warned that “[i]f Iraq’s economy falters as a result of a misguided economic reconstruction program based on shock therapy, the country will be further indebted with little to show for it.”²¹⁹

The reconstruction process was exorbitant and slighted rational labor market mechanisms because Iraq was strained with high unemployment while multinational corporations employed foreign workers who were paid many times more than Iraqis would have been paid.²²⁰ Representative Henry Waxman, Ranking Minority Member on the U.S. House Committee on Government reform, wrote in a September 2003 memorandum that congressional investigations revealed that “many reconstruction projects could be reduced by 90% if the projects were awarded to local Iraqi companies rather than to large government contractors like Halliburton or Bechtel.”²²¹ Congressional records revealed specific procurement examples in which multinational corporations cost between five and over one hundred times more than an Iraqi construction firm would have charged for the same project.²²² Had Iraqi companies been awarded

219. Stiglitz, *supra* note 45.

220. ARNOVE, *supra* note 85, at 15-16; Juhasz, *supra* note 115 (noting the excessive cost of American companies and that “Iraqis argue that they have the knowledge, skill and experience to conduct the reconstruction themselves”). Consequently, not only were labor market mechanisms not being pursued because higher-paid foreign workers often executed employment tasks instead of locals, but Iraqis had more difficulty finding employment even though much of the infrastructure that needed to be repaired was a direct consequence of a foreign power’s bombing operations. IN THE NAME OF DEMOCRACY, *supra* note 215, at 63 (emphasizing that Iraqis were prohibited from fixing critical infrastructure); Tiefer, *supra* note 207, at 4-5 (stating that Iraqis were prevented, in certain industrial sectors, from working to rebuild their own country).

221. Letter from Henry A. Waxman, Ranking Minority Member, U.S. House of Representatives, to Joshua Bolten, Director, U.S. Office of Management and Budget (Sept. 30, 2003), *available at* <http://rense.com/general43/iraqicompanieswouldsave.htm> (last visited Dec. 4, 2015); *see also* Tiefer, *supra* note 207, at 42 (accentuating the common complaint that American firms do all of the work even though Iraqis do not have as high of overhead expenditures as U.S. design-build firms); Kinan Obeidin, *The Iraq Reconstruction Contracts: Limiting the Sources for Government Contracts*, 29 J. LEGAL PROF. 259, 263 (2005).

222. U.S. H. COMM. ON GOV’T REFORM, MINORITY STAFF SPECIAL INVESTIGATIONS DIV., HALLIBURTON’S GASOLINE OVERCHARGES, 3 (2004), *available at* http://www.halliburtonwatch.org/news/waxman_gas_overcharges.pdf (last visited Dec. 4, 2015) [hereinafter Waxman] (reporting that foreign contractors charged about \$25 million to refurbish police stations in Basra while an Iraqi

the same contracts, there might have been a lower unemployment rate, an alleviation of social discontent caused by adverse economic conditions, a lower cost of construction for U.S. taxpayers, and a mitigation of the perception of a profiteering bonanza for multinational corporations.²²³

Explanations provided for the dearth of Iraqi companies receiving contracts included that Iraqis were not sufficiently experienced²²⁴ and that local contractors "lacked the requisite insurance."²²⁵ There was a heightened risk of loss due to violence and foreign insurance companies began to deny claims for losses inside Iraq,²²⁶ but Iraqi companies had a fractional cost of construction at risk irrespective of actuarial insurance calculations. Iraq also had a pre-invasion tort law system to address liability in the event of faulty

company could have done the work for about \$5 million); Klein, *supra* note 96 (reporting that the CPA purchasing concrete walls from foreign companies at a price of \$1,000 each when seventeen Iraqi state-owned cement companies could have produced the walls at \$100 each). In a case where locals were hired, Major General David Petraeus explained to members of the House Committee on Government Reform that he hired Iraqis to fix a cement plant for \$80,000, but engineers from US companies quoted a price of \$15 million to complete the same contracts. Waxman, *supra* note 222, at 2.

223. Waxman, *supra* note 222, at 2 ("The question we need to confront is whether the Administration is putting the interests of companies like Halliburton and Bechtel over the interests of the American taxpayer and the Iraqi people. When inordinately expensive reconstruction projects are awarded to high-cost federal contracts with close political ties to the White House, the Administration can create a lose-lose situation: not only do U.S. taxpayers vastly overpay for reconstruction services, but Iraqis are denied urgently needed employment opportunities."). Multinational construction companies were not required to pay much Iraqi tax and could repatriate profits.

224. Charles Bronowski & Chad Fisher, *Money as a Force Multiplier: Funding Military Reconstruction Efforts in Post-Surge Iraq*, 2010 ARMY LAW. 50, 61 (2010) (quoting service members who mentioned that "the United States has concerns that Iraqis are becoming too reliant on U.S. expertise in executing reconstruction programs rather than developing organic Iraqi capabilities").

225. Waxman, *supra* note 222, at 5.

226. See, e.g. T. Christian Miller, *AIG Faces Inquiry Over Medical Care for U.S. Contractors*, L.A. TIMES (Apr. 22, 2009), available at <http://articles.latimes.com/2009/apr/22/nation/na-aig22> (last visited Dec. 9, 2015) (stating that AIG denied 44% of all serious injury claims). The inability to attain private insurance required more dependence on federal compensation programs. War Hazards Compensation Act, 42 U.S.C. §§ 1701-1712 (enacted on Dec. 2, 1942); see also Compensation for Injury, Disability, Death, or Enemy Detention of Employees of Contractors with the United States, 20 C.F.R. pt. 61 (2005).

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construction,²²⁷ while CPA Order 17 made contractors from coalition countries immune from liability in Iraqi courts.²²⁸

B. No-Bid Contracts

The occupation's procurement process was not administered with abounding regard for competitive bidding procedures, but instead was candidly called a "reconstruction racket,"²²⁹ the "coalition of the billing,"²³⁰ and corruptly managed.²³¹ No-bid procurement contracts were awarded to companies with close connections to Iraqi defectors who urged for the war²³² and American corporations with links to influential U.S. politicians.

Criticism was leveled over conflicts of interest as then-Vice President Cheney's former company, Halliburton,²³³ was awarded

227. There was a legal structure that might have provided a foundation for liability because pre-invasion Iraqi tort law did provide causes of action that could compensate for harms based on intent, negligence, and strict liability standards. Civil Code of 1990 art. 202 (Iraq). The existing Iraqi tort law system was recognized as the applicable law in a Georgia District Court case that involved two contractors—an American plaintiff and Kuwait Gulf defendant. *Baragona v. Kuwait Gulf Link Transp. Co.*, 688 F. Supp. 2d 1353, 1355-56 (N.D. Ga. 2007). It is not clear why Iraqi construction companies would be required to carry additional insurance beyond that which would normally be required in their own country.

228. Status of the Coalition Provisional Authority, MNF -Iraq, Certain Missions and Personnel in Iraq Order No. 17 (revised) of 2004 §§ 1(11), 4(2)-(3) (CPA, Iraq); see also §§ 1(1)-(2), 2(1) ("[u]nless provided otherwise herein, the MNF, the CPA, Foreign Liaison Missions, their Personnel, property, funds and assets, and all International Consultants shall be immune from Iraqi legal process.").

229. ARNOVE, *supra* note 85, at 78.

230. Derek Gregory, *Vanishing Points: Law, Violence, and Exception in the Global War Prison*, in *TERROR AND THE POSTCOLONIAL* 55, 81 (Elieke Boehmer & Stephen Morton eds., 2010) (stating term used by Peter Singer).

231. Gathii, *supra* note 36, at 737.

232. L. ELAINE HALCHIN, CONG. RESEARCH SERV., RL 32370, THE COALITION PROVISIONAL AUTHORITY (CPA): ORIGIN, CHARACTERISTICS, AND INSTITUTIONAL AUTHORITIES 22-24 (2005) (reporting that a \$327 million contract was given to Nour USA in November 2003 to equip the new Iraqi armed forces, that there were nineteen other bidders and Nour's bid was \$231 million lower than Bumar Group, that Nour's president A. Huda Faouki is an alleged friend of Ahmad Chalabi, and that Nour had no experience because it was formed in May 2003, but the contract was eventually canceled because of procurement contract dispute filings). A lower price is favorable but possible conflicts of interest and lack of experience can undermine a legitimate procurement process.

233. Many criticized this connection between the vice president and Halliburton as a conflict of interest. Robert Bryce & Julian Borger, *Cheney is Still Paid by Pentagon Contractor: Bush Deputy Gets Up to \$1m From Firm With Iraq Oil Deal*, *GUARDIAN* (Mar. 12, 2003, 10:02 AM), available at <http://www.theguardian.com/world/2003/mar/12/usa.iraq5> (last visited Dec. 4,

with the contract to rebuild existing Iraqi oil production facilities in a secretive no-bid contract two weeks before the invasion.²³⁴ Contract rights morphed into \$2.4 billion in revenues for Halliburton over three years²³⁵ and Halliburton reported a 62% increase in revenues.²³⁶ KBR, Halliburton's subsidiary, was awarded at least \$39.5 billion in federal contracts related to the Iraq war.²³⁷ Some funds were unaccounted for and Halliburton and other American companies later became subject to a series of Congressional investigations over overbilling.²³⁸ During

2015) (noting that Cheney was still being paid up to \$1 million a year in "deferred compensation" from Halliburton while he was vice president); Aaron Blake, *Rand Paul in '09: Cheney Pushed Iraq War to Benefit Halliburton*, WASH. POST (Apr. 7, 2014), available at <http://www.washingtonpost.com/blogs/post-politics/wp/2014/04/07/rand-paul-in-09-cheney-pushed-iraq-war-to-benefit-halliburton/> (last visited Dec. 4, 2015) (stating that Senator Rand Paul suggested Cheney was clearly at the forefront of pushing for war and that his own company (Halliburton) benefited).

234. Abigail H. Avery, *Weapons of Mass Construction: The Potential Liability of Halliburton Under the False Claims Act and the Implications to Defense Contracting*, 57 ALA. L. REV. 827, 837-38 (2006) (noting that the contract was consummated in March 2003). This followed after Halliburton's submission of initial planning documents for rebuilding (in fall 2002), which was also an awarded contract. CHALMERS JOHNSON, *THE SORROWS OF EMPIRE: MILITARISM, SECRECY AND THE END OF THE REPUBLIC* 144 (2004); CBS, *Halliburton Defends No-Bid Iraq Contract*, INFORMATION CLEARING HOUSE (Apr. 27, 2003), available at <http://www.informationclearinghouse.info/article3141.htm> (last visited Dec. 4, 2015) (stating that there was no competition for contracts worth up to \$7 billion and that Cheney was instrumental in placing Halliburton into that privileged position).

235. HENRY A. WAXMAN, H. COMM. ON GOV'T REFORM, MINORITY STAFF SPECIAL INVESTIGATIONS DIV., *HALLIBURTON'S PERFORMANCE UNDER THE RESTORE IRAQI OIL 2 CONTRACT*, 3(2006), available at http://www.halliburtonwatch.org/reports/RIO2_audit.pdf (last visited Dec. 4, 2015) [hereinafter House Comm. on Gov't Ref.]; See also Martha Minow, *Outsourcing Power: How Privatizing Military Efforts Challenges Accountability, Professionalism, and Democracy*, 46 B.C. L. REV. 989, 990 (2005); Erik Eckholm, *F.B.I. Investigating Contracts With Halliburton*, N.Y. TIMES (Oct. 29, 2004), available at http://www.nytimes.com/2004/10/29/politics/29contract.html?_r=0 (last visited Dec. 4, 2015) (stating that the FBI initiated an investigation because many called the no-bid awards illegal procurement contracts).

236. Minow, *supra* note 235, at 992-93.

237. Fifield, *supra* note 213.

238. Neil King, Jr., *Halliburton's Iraq Cost Examined*, WALL ST. J. (Mar. 12, 2004, 12:01 AM), available at <http://www.wsj.com/articles/SB107905639161753571> (last visited Dec. 4, 2015) (noting "significant deficiencies" in accounting for KBR billing); T. Christian Miller, *U.S. Officials Suspected of Embezzlement in Iraq*, L.A. TIMES (May 5, 2005), available at <http://articles.latimes.com/2005/may/05/world/fg-fraud5> (last visited Nov. 23, 2015) (reporting that \$100 million dollars in US taxpayer money had disappeared). Among the many scandals, independent auditors found that Halliburton was importing fuel from Kuwait at double price, thus charging US taxpayers twice as much (as it was a "cost-plus" contract in which Halliburton

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a Congressional hearing, Marie de Young, a Halliburton employee, testified that “we, essentially, lost control of the project and paid between four to nine times what we needed to fund that project” because there were two or three layers of subcontracts.²³⁹

Bechtel was also awarded infrastructure repair contracts pursuant to fairly open-ended terms.²⁴⁰ Even as the bidding process became more competitive, in January 2004, Sheryl Tappan, head of Bechtel’s proposal team, called the competition a “sham” and a “farce,” and opined that she had never witnessed such an “arrogant” and “egregious” Pentagon bidding process.²⁴¹ U.S. federal law requires competitive bidding for government procurement and WTO Government Procurement Agreement rules mandate non-discriminatory treatment for WTO member countries,²⁴² but

received whatever its costs were plus a profit)). The auditors called the Kuwait oil purchases “highway robbery” and “outrageously high.” House Comm. on Gov’t Ref., *supra* note 235, at 4. In a series of ten Pentagon audits during 2004-05, auditors discovered that Halliburton’s overcharging resulted in \$219 million in “questioned” costs and \$60 million in “unsupported costs.” *Id.* Furthermore, Halliburton had been warned multiple times in 2003 and 2004 and was consistently told of “significant deficiencies” in its cost estimations and even that it “universally failed to provide adequate cost information as required,” but the Pentagon kept awarding Halliburton new contracts. *Id.* at 2-5, 6-14; Avery, *supra* note 234, at 839-41 (describing other investigations into Halliburton, including an admission that two of its officials had been receiving kickbacks, engaging in overcharging for food services, and failing to perform services adequately); *see also* Tiefer, *supra* note 207, at 12, 28-30.

239. Minow, *supra* note 235, at 1011.

240. 1 INTERNATIONAL BUSINESS PUBLICATIONS, USA, KUWAIT: TAXATION LAWS AND REGULATIONS HANDBOOK 171 (2012) (USAID awarded an initial \$34.6 million on April 17, 2003 to Bechtel for the “repair, rehabilitation or reconstruction of vital elements of Iraq’s infrastructure. . . . includ[ing] . . . electrical grids, municipal water systems and sewage systems,” and then left open the allocation of additional funding); *see also* Elizabeth Becker, *Aftereffects: The Contractors; Feeding Frenzy Under Way, as Companies From All Over Seek a Piece of the Action*, N.Y. TIMES (May 21, 2003), available at <http://www.nytimes.com/2003/05/21/world/aftereffects-contractors-feeding-frenzy-under-way-companies-all-over-seek-piece.html> (last visited Dec. 4, 2015) (stating that within a month, experts were predicting that the contract would be worth about \$20 billion).

241. House Comm. on Gov’t Ref., *supra* note 235, at 5.

242. The CPA was acting on behalf of the Bush Administration and was an effective unit of the US government, meaning that US obligations under WTO Government Procurement Agreement (GPA) rules would apply. Michael Davey, *To the Victor Go No Spoils? The United States as an Invading Military Force and Its Relationship With Economic Contracts in Occupied Iraq*, 23 PENN ST. INT’L L. REV. 721, 735 (2005) (discussing Charter of Economic Rights and Duties of States (1974) and emphasizing that the Charter forbids any State from discrimination based on “political, economic or social systems”).

multinational companies from non-coalition countries were often deemed ineligible.²⁴³ General rules for competitive bidding were frequently exempted by raising the “public interest exception,” which alleged that reconstructing Iraq is indispensable for national security and defense purposes²⁴⁴ and by stating that there was an “unusual and compelling urgency” for utilizing the chosen procurement process.²⁴⁵

Because financing for reconstruction came primarily from the Iraq Relief and Reconstruction Funds, U.S. taxpayers, and loans,²⁴⁶ foremost policies underlying the prudent dispersal of funds on behalf of the U.S. taxpayer-principal, included saving costs²⁴⁷ and buttressing

243. David Palmetter & Niall P. Meagher, *WTO Issues Relating to U.S. Restrictions on Participation in Iraq Reconstruction Contracts*, Am. Soc’y Int’l L. (Dec. 26, 2003), available at <http://www.asil.org/insights/volume/8/issue/29/wto-issues-relating-us-restrictions-participation-iraq-reconstruction> (last visited Dec. 4, 2015) (explaining that 63 countries were eligible); Tiefer, *supra* note 207, at 43 (noting the frequent ineligibility due to a MNC’s home state not being a member of the coalition).

244. *U.S. Faces Backlash Over Contracts*, CNN (Dec. 10, 2003, 10:40 PM), available at <http://www.cnn.com/2003/WORLD/meast/12/10/sprj.irq.contracts/> (last visited Dec. 4, 2015) (“It is necessary for the protection of the essential security interests of the United States to limit competition for the prime contracts for these procurements to companies from the United States, Iraq, Coalition partners and force contributing nations.”).

245. Other exceptions that permit granting procurement contracts without a competitive bidding process include when only a single supplier is qualified to provide the service or product in question; when an agency confronts an “unusual and compelling urgency” for supply of a good or service that would otherwise seriously injure the government; when there is a case of national emergency; when a federal statute, treaty or the terms of an international agreement permit something other than a competitive process; and when the head of an agency decides that bypassing competitive procurement procedures are in the public interest. 41 U.S.C. § 253 (2012). It was generally the “urgency” and public interest exceptions that were espoused as exceptions to granting sole-source contracts. See Jeffrey Marburg-Goodman, *USAID’s Iraq Procurement Contracts: Insider’s View*, 39 PROCUREMENT LAW. 10 (2003).

246. Emergency Supplemental Appropriations Act for Defense and for the Reconstruct of Iraq and Afghanistan of 2004, Pub. L. No. 108-106, 117 Stat. 1225 (enacted Nov. 6, 2003); Halchin, *supra* note 232, at 8, 19, 21-22.

247. Given that contractors received appropriated federal government funds, there could have been potential violations of Federal Acquisition Regulations, the Competition in Contracting Act (CICA), and military procurement rule violations, all of which require full and open competition to obtain competitive pricing and save costs. Halchin, *supra* note 232, at 24, 33; 41 U.S.C. § 3301 (2015); 48 C.F.R. § 6.101 (2003); 10 U.S.C. § 2304 (2015). Although, ambiguity was created in that the former Administrator of the Office of Federal Procurement Policy explained that “the CPA is *not* the United States Government. Accordingly, if one enters into a contractual relationship with the CPA, one is not entering into a contractual relationship with the United States. The rights and remedies available to parties contracting with the United States will not be available in a contractual relationship

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public integrity,²⁴⁸ and on behalf of the Iraqi public-principal, included the obligation of the CPA to operate as a responsible fiduciary because occupation law and Iraqi funds were at stake.²⁴⁹ Journalist Naomi Klein, author of *The Shock Doctrine* (2007) and a critic of the CPA's imposed reforms and the procurement process in Iraq, confronted former Federal Reserve Chairman Alan Greenspan with Greenspan's definition of "crony capitalism" from his book and remarked:

You said "when a government's leaders or businesses routinely seek out private sector individuals or businesses and in exchange for political support bestow favors on them, the society is said to be in the grip of 'crony capitalism.'" You say, "The favors generally take the form of monopoly access to certain markets, preferred access to sales of government assets, and special access to those in power." I kept thinking about Halliburton, Blackwater, Lockheed, and Boeing. You were referring to Indonesia at the time, but I'm wondering, according to your definition, [whether you think the U.S. is a crony capitalist economy] . . . we're seeing [extraordinary] contracting emerging, as in the words of the *New York Times*, a fourth arm of government. [The] [f]ront page of the *New York Times* talks about \$6 billion being investigated for criminal activity in contract allocation in Iraq.²⁵⁰

with the CPA." SIGIR, IRAQ RECONSTRUCTION: LESSONS LEARNED IN CONTRACTING AND PROCUREMENT 24 (2006); *United States ex rel. DRC, Inc. v. Custer Battles, L.L.C.*, 376 F. Supp. 2d 617, 631 (2005) (Defendants alleging that agents were assured that the CPA was a "separate and distinct entity from the warring powers" and "under no circumstances was it the U.S. government").

248. S. REP. NO. 99-345, at 3 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5266, 5268 ("[F]raud erodes public confidence in the Government's ability to efficiently and effectively manage its programs . . . Even in the cases where there is no dollar loss . . . the integrity of quality requirements in procurement programs is seriously undermined.").

249. Funding can be allocated as CPA operational expenses, but fiduciary obligations require the occupier to act in the best interest of the principal. Hague Regulations, *supra* note 120, art. 48 ("If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall . . . be bound to defray the expenses of the administration of the occupied territory . . ."); *Id.* art. 49 ("If, in addition to the taxes . . . the occupant levies other money contributions in the occupied territory, this shall be for the needs of the army or of the administration of the territory in question."). Iraqi oil revenue is part of this public trust; the resources belong to the Iraqi people. Because revenues were required to be used for the benefit of the people and for the occupier to "administer" the territory, locking in "no bid," large-scale and long-term procurement contracts in favor of firms from the occupier's state for reconstructing the country at approximately ten times the amount that Iraqis would have charged could violate fiduciary obligations. Being unable to account for billions of dollars aggravates the problem. *See id.*

250. *Alan Greenspan vs. Naomi Klein on the Iraq War, Bush's Tax Cuts*,

Greenspan retorted that government corruption with the private sector is not the “dominant force” in the U.S. economy, while corruption was the dominant force in Indonesia under Suharto.²⁵¹ This is a valid distinction, but foreign direct investment in developing countries is known to be an environment rife with corruption²⁵² and the argument that elected government officials have been allegiant to key businesses that support politicians in a manner that is detrimental to public interest and voters, such as by lobbying and with campaign contributions from the private sector,²⁵³ has been a criticism of American democracy for decades.²⁵⁴ Even the purveyor of public information—the American media—is compromised by capitalist interests.²⁵⁵

Economic Populism, Crony Capitalism, and More, *supra* note 171.

251. *Id.*

252. Clemens Fuest, Giorgia Maffini & Nadine Reidel, *Do Corruption and Taxation Affect Corporate Investment in Developing Countries?*, in CRITICAL ISSUES IN TAXATION AND DEVELOPMENT 65, 65 (Clemens Fuest & George R. Zodow eds., 2013); Jose Godinez, *Corruption in Latin America and How It Affects Foreign Direct Investment (FDI): Causes, Consequences, and Possible Solutions*, in BUSINESS DEVELOPMENT OPPORTUNITIES AND MARKET ENTRY CHALLENGES IN LATIN AMERICA 31, 40 (Mauricio Garita & Jose Godinez eds., 2015).

253. Timothy K. Kuhner, *The Separation of Business and State*, 95 CALIF. L. REV. 2353, 2354 (2007) (“Money in politics can be viewed as an assault on political equality – wealthy actors subjugating common citizens – and yet it can also be viewed as a form of political expression – free speech. This is enough to cause a rational observer to throw up her hands.”); William N. Eskridge, Jr., *Politics Without Romance: Implications of Public Choice Theory for Statutory Interpretation*, 74 VA. L. REV. 273, 283 (1988) (the private sector influence on government can “skew public decision-making toward private rent-seeking and away from public interest”).

254. There are debates over campaign finance. *See generally* ROBERT E. MUTCH, *BUYING THE VOTE: A HISTORY OF CAMPAIGN FINANCE REFORM* (2014); C. Edwin Baker, *Campaign Expenditures and Free Speech*, 33 HARV. C.R.-C.L. L. REV. 1 (1998). Lobbying can be controversial. *See generally* DIRTY DEALS? AN ENCYCLOPEDIA OF LOBBYING, POLITICAL INFLUENCE, AND CORRUPTION (Amy H. Handlin ed., 2014); RONALD DWORKIN, *IS DEMOCRACY POSSIBLE HERE?: PRINCIPLES FOR A NEW POLITICAL DEBATE* 129 (2006) (“Large campaign contributors purchase what is euphemistically called ‘access’ to officials; in fact they often purchase not merely access but control.”). CPA reforms can lead to a socioeconomic system and complaints that have long been voiced about the US economy—that the American political system is beholden to corporate agendas rather than to voters and the populace.

255. *See generally* Robert Bejesky, *Press Clause Aspirations and the Iraq War*, 48 WILLAMETTE L. REV. 343 (2012) (noting that dominant media organizations may not always adequately accentuate essential political concerns to Americans even though the media are the purveyors of information and must support US democracy, but the media industry exists in a conglomerate structure, is driven by profitability, and may not always effectively check government as the Framer’s of the

C. *Fraud in Contracting*

The procurement process for reconstruction in Iraq was not only inefficient by demonstrating favoritism for foreign companies over local companies and potentially operating improperly by granting no-bid contracts to select foreign companies,²⁵⁶ but the Inspector General for Iraq Reconstruction reported that billions of dollars allocated for construction contracts were wasted or missing under allegations of fraud, including fraud perpetrated by U.S. contractors.²⁵⁷ Consequently, the False Claims Act (“FCA”), which has been used for over a century to recover federal funds attained through fraudulent means²⁵⁸ (including through *qui tam* actions by private citizens on behalf of the government),²⁵⁹ was employed to recoup funds acquired by fraud perpetrated in Iraq. Even though the FCA specifies that “no proof of specific intent to defraud is required” to impose liability,²⁶⁰ which means that deliberately ignoring or recklessly disregarding the truth will satisfy the contractor’s *mens rea*

Constitution intended, which was a prime complaint about the media’s performance in persuading Americans to support the invasion of Iraq).

256. See *supra* Parts V(A)(B).

257. James Glanz, *Audit Describes Misuse of Funds in Iraq Projects*, N.Y. TIMES, Jan. 25, 2006, at A2; *An Oversight Hearing on Accountability for Contracting Abuses in Iraq: Hearing Before the S. Dem. Pol’y Comm.*, 109th Cong. (2006) (statement by Alan Grayson, Attorney, Grayson & Kubli, P.C.) (attorney representing whistleblowers testifying that “[h]alf of the \$18 billion in Iraq reconstruction funds are unaccounted for. Senator Dorgan has said that there is an orgy of greed among contractors in Iraq, and there is ample evidence to back that up”). More recent government investigations placed missing Iraqi money at \$6.6 billion. Paul Richter, *Missing Iraq Money May Have Been Stolen, Auditors Say*, L.A. TIMES (June 13, 2011), available at <http://articles.latimes.com/2011/jun/13/world/la-fg-missing-billions-20110613> (last visited Dec. 4, 2015).

258. An Act to Prevent and Punish Frauds upon the Government of the United States, Pub. L. No. 37- Chap. 67, 12 Stat. 696 (1863) (reenacted as False Claims Act, 31 U.S.C. §§ 3729-33(2000)); see also Avery, *supra* note 234, at 828-29; Dan L. Hargrove, *Soldiers of Qui Tam Fortune: Do Military Service Members Have Standing to File “Qui Tam” Actions Under the False Claims Act?*, 34 PUB. CONT. L.J. 45, 47 (2004); Jessica C. Morris, *Civil Fraud Liability and Iraq Reconstruction: A Return to the False Claims Act’s War-Profiteering Roots?*, 41 GA. L. REV. 623, 646 (2007) (noting that between 1987 and 2002 over \$6 billion was recovered through FCA actions); Erik Eckholm, *Judge Limits Statute’s Ability to Curb Iraq Contractor Fraud*, N.Y. TIMES (July 12, 2005), available at <http://query.nytimes.com/gst/fullpage.html?res=9B0CEED6123DF931A25754C0A9639C8B63> (last visited Dec. 4, 2015) (calling the FCA a “potent weapon against contractor fraud”).

259. 31 U.S.C. § 3730(b)-(d) (2012).

260. 31 U.S.C. § 3729(b)(1)(B) (2012).

for the statute,²⁶¹ commentators expressed that it was notably challenging to effectively hold contractors responsible under the FCA for missing reconstruction funds.²⁶² If losses cannot be successfully recovered, a contractor could be the recipient of a windfall gain, which is to the detriment of Americans and Iraqis.

There were periodic warnings of the ongoing danger of fraud in Iraq²⁶³ and over the first five years of occupation, fraud losses aggregated into the billions of dollars.²⁶⁴ Losses were attributable to diverse shams, including outright schemes of artifice perpetrated by foreigners who sometimes had no proven track record of success with the business entity contracting with the CPA,²⁶⁵ billing authorities inflating invoices,²⁶⁶ employees of established multinationals

261. 31 U.S.C. § 3729(a)(1), (b)(1) (2012) (creating liability for “knowingly” made false claims presented to the government, which includes “actual knowledge” of falsity, acting in “deliberate ignorance of the truth,” or acting in “reckless disregard of the truth or the falsity of the information”).

262. M.M. Harris, Commentary, *Patriots and Profiteers: Combating False Claims by Contractors in the Iraq War and Reconstruction*, 59 ALA. L. REV. 1227, 1227 (2008).

263. Reuters, *U.S. Audit Finds Fraud in Iraq*, N.Y. TIMES (July 31, 2004) available at <http://www.nytimes.com/2004/07/31/international/middleeast/31audi.html> (last visited Nov. 15, 2015) (reporting that one month after the CPA was dissolved, the CPA’s Inspector General’s office explained that it had been conducting 69 criminal investigations involving fraud, with 27 of those investigations still open). As of July 30, 2007, the Special Inspector General for Iraq Reconstruction noted that there were “57 ongoing investigations into fraud, waste, and abuse in Iraq reconstruction, 28 of which are at the Department of Justice for prosecution,” and there were five convictions, 13 arrests, and 8 pending trials. SIGIR, QUARTERLY REPORT AND SEMI-ANNUAL REPORT TO THE U.S. CONG. 13 (2007), available at <http://www.dtic.mil/get-tr-doc/pdf?AD=ADA509376&Location=U2&doc=GetTRDoc.pdf> (last visited Dec. 4, 2015); Morris, *supra* note 258, at 627 (referencing George Washington University expert Steven L. Schooner warning that the “potential for chicanery is great and the potential universe of whistle-blowers is mind-boggling.”).

264. Sarah E. Barnes, Comment, *Categorizing Conflict in the Wartime Enforcement of Frauds Act: When Are We Really at War?*, 59 DEPAUL L. REV. 979, 991 (2010); Erin M. Brown, Note, *The Wartime Suspension of Limitations Act, the Wartime Enforcement of Fraud Act, and the War on Terror*, 85 NOTRE DAME L. REV. 313, 331 (2009) (legal amendments were “presented as a way to address the numerous accounts of fraud in the Iraq and Afghanistan campaigns”).

265. 60 Minutes, *The Mother of All Heists*, CBS NEWS (June 14, 2007) available at <http://www.cbsnews.com/stories/2006/10/19/60minutes/main2109200.shtml> (last visited Dec. 4, 2015) (reporting that the CPA granted a \$1.2 billion contract to a Jordanian company that was founded just weeks earlier with \$2,000 in capital, and \$750 to \$800 million of that amount was stolen).

266. For example, in February 2006, the first security firm fraud case to proceed

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embezzling funds,²⁶⁷ and CPA officials engaging in wrongdoing.²⁶⁸ The dearth of suitable CPA auditing controls probably did not contribute a deterrent with an expected high risk of punishment²⁶⁹ but there were some successful prosecutions.²⁷⁰ Private military contractors (“PMCs”) were also involved in protracted legal battles over billing, but in many cases PMCs fared better than initial press

to trial involved the Alexandria, Virginia firm Custer Battles, which was accused of bilking the American taxpayer for millions of dollars in overbilling in security contracts for the Iraqi airport, the Iraqi currency exchange, and other venues. Babcock, *supra* note 202. After a three-week trial, the jury found Custer Battles liable to repay \$3 million dollars in fraudulent invoices, which invoked the FCA’s tremble damage provisions. Morris, *supra* note 258, at 628. Several months later Judge Ellis granted the defendant’s motion for judgment as a matter of law and stated that the action did not meet the element of being “presented. . .to employees or officers of the United States acting in their official capacity.” United States *ex rel.* DRC, Inc. v. Custer Battles, L.L.C., 444 F. Supp. 2d 678, 682 (E.D. Va. 2006). However, the case was reversed on this ground and the jury verdict was reinstated. Ellen Nakashima, *Court Revives Suit Over Iraq Work*, WASH. POST (Apr. 11, 2009), available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/04/10/AR2009041003448.html?hpid=topnews> (last visited Dec. 4, 2015).

267. Michael S. Devine, *Procurement Fraud*, 2006 ARMY LAW. 132, 134 (stating that an employee of Halliburton subsidiary, Kellogg, Brown, and Root (KBR), and a Kuwaiti businessman, were charged with “devising a scheme to defraud the United States of more than \$3.5 million related to the awarding of a subcontract to supply fuel tankers for military operations in Kuwait”); see also Minow, *supra* note 235, at 990; Wilkinson, *supra* note 153, at 234-35; Paul D. Carrington, *Enforcing International Corrupt Practices Law*, 32 MICH. J. INT’L L. 129, 136-37 (2010) (noting that in 2009, Halliburton was required to pay \$559 million for engaging in corruption in Nigeria, Halliburton manager Albert Jack Stanley was convicted for bribing Nigerian officials, and Halliburton moved its corporate headquarters from Houston to Dubai apparently to attempt to reduce liability and avoid criminal jurisdiction).

268. James Glanz, *Wide Plot Seen in Guilty Plea in Iraq Project*, N.Y. TIMES (Feb. 2, 2006), available at http://www.nytimes.com/2006/02/02/international/middleeast/02reconstruct.html?n=Top%2FNews%2FInternational%2FCountries%20and%20Territories%2FIraq&_r=0 (last visited Dec. 4, 2015) (stating that Robert J. Stein, who was a CPA comptroller and funding officer, pled guilty to several felonies that involved kickbacks on lucrative contracts and embezzlement); Griff Witte, *U.S. Contractor Admits Bribery for Jobs in Iraq*, WASH. POST (Apr. 19, 2006), available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/04/18/AR2006041801742.html> (last visited Dec. 4, 2015) (reporting that an American businessman, Philip H. Bloom, pled “guilty to conspiracy, bribery and money-laundering charges” related to “getting reconstruction contract for his companies”).

269. See *supra* Part IV(D) (discussing lack of CPA auditing controls).

270. SIGIR, *supra* note 2, at 9 (reporting that there were 82 convictions resulting from investigations).

releases of alleged wrongdoing intimidated.²⁷¹ The common perception of PMCs being implicated in improper dealings was presumptively due to the breathtakingly lucrative contracts that awarded PMC firms an average of \$445,000 for each employee per year, while an Army Sergeant, carrying out comparable tasks, would earn \$51,100 to \$69,350 per year.²⁷²

Perhaps the most probative and encompassing implication from these deficits in the procurement process is that the combination of the CPA unilaterally dictating new resource-shifting laws and institutions on Iraq and employing entities engaged in fraudulent practices furnished an abysmal example of American “democracy” and remiss adherence to the “Rule of Law”²⁷³ even though the CPA’s newly instituted civil justice institutions and practices sought to improve then-existing Iraqi institutions²⁷⁴ and provide a favorable archetype. These episodes of departure between promise and practice, along with CPA Order 17’s endowment of immunity to contractors from Iraqi legal process²⁷⁵ so that the Iraqi government or people did

271. Christina Wilkie, *Iraq War Contractors Fight On Against Lawsuits, Investigations, Fines*, HUFFINGTON POST (Mar. 20, 2013 7:34 AM), available at http://www.huffingtonpost.com/2013/03/20/iraq-war-contractors_n_2901100.html (last visited Dec. 4, 2015) (stating that “many of the war’s most controversial, and well-paid, U.S. contractors faced relatively few repercussions for their conduct in Iraq,” but over the last two years “contractors are on the defensive against allegations of torture, fraud, negligence and extrajudicial killings”).

272. CONG. BUDGET OFFICE, PUB. NO. 3053, CONTRACTOR’S SUPPORT OF U.S. OPERATIONS IN IRAQ 14 (2008), available at <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/96xx/doc9688/08-12-iraqcontractors.pdf> (last visited Dec. 4, 2015).

273. FINNIS, *supra* note 42, at 270-71 (noting that the “Rule of Law” is the name frequently given to describe an effectively functioning legal system, which is a system that fosters compliance with clear, coherent, and stable rules, and holds government officials accountable).

274. Daniel Bodanky, *Establishing the Rule of Law*, 33 GA. J. INT’L & COMP. L. 119, 129 (2004) (relaying also that some US military perceptions were that Iraq had “no rule of law,” “Iraqis are all corrupt,” and they were prone to taking “bribes”). Corruption is predominantly attributable to poverty. Michael Johnston, *Poverty and Corruption*, FORBES (Jan. 22, 2009, 6:00 PM), available at http://www.forbes.com/2009/01/22/corruption-poverty-development-biz-corruption09-cx_mj_0122johnston.html (last visited Dec. 4, 2015).

275. Status of the Coalition Provisional Authority, *supra* note 228, § 4(2) (“Contractors shall not be subject to Iraqi laws or regulations in matters relating to the terms and conditions of their contracts. . . .”); Atif Rehman, Note, *The Court of Last Resort: Seeking Redress for Victims of Abu-Ghraib Torture Through the Alien Tort Claims Act*, 16 IND. INT’L & COMP. L. REV. 493, 498 (2006) (Order 17 resulted in granting “complete immunity to contractors and military personnel from prosecution in Iraqi courts for killing Iraqis or destroying local property”); J. Stephen

not possess a civil fraud action against wrongdoers,²⁷⁶ suggest that the “Rule of Law” might be perceived as a mere catchphrase to shift blame for the Bush Administration policies in Iraq.²⁷⁷ An Iraqi judge opined:

We don't need you to come here and tell us about what law is. We invented law. . . . We are the people who figured law out, thousands of years ago. But now your soldiers are coming in and telling us what to do, and you're not respecting our legal traditions or legal process. The first thing the Americans did after the war was to announce that they were immune from Iraqi legal process. So, if an American commits a crime, they're completely immune, there's nothing that we can do about it. The Americans are unaccountable. How can this be the rule of law?²⁷⁸

D. *Reconstruction Progress and the Role of Military Reconstruction Engineers*

With such significant deficits in the procurement contracting process and oversight, it was not surprising that reasonable estimates of contract completion at the expected reconstruction expense often fell short, and this was another reason for Iraqi dismay with the occupation. Three years into the occupation, the U.S. Inspector General's report on reconstruction noted that while \$22 billion had been spent on water, sewage and electricity projects, the infrastructure remained at prewar levels.²⁷⁹ With poor performance on reconstruction,²⁸⁰ Iraqis lacking essential commodities while being

Shi, Comment, *The Legal Status of Foreign Military and Civilian Personnel Following the Transfer of Power to the Iraqi Interim Government*, 33 GA. J. INT'L & COMP. L. 245, 255-56 (2004).

276. Morris, *supra* note 258, at 635.

277. Balakrishnan Rajagopal, *Invoking the Rule of Law in Post-Conflict Rebuilding: A Critical Examination*, 49 WM & MARY L. REV. 1347, 1348 (2008) (“this newfound fascination with the rule of law is misplaced” as it is invoked as the supposed causal mechanism that leads to human rights violations, threats to security, and even economic development but it really is a “desire to escape from politics by imagining the rule of law as technical, legal, and apolitical”).

278. Bodanky, *supra* note 274, at 130.

279. Daniel McGrory, *In The Chaos of Iraq, One Project is on Target*, GLOBAL POLICY (May 3, 2006), available at <https://www.globalpolicy.org/component/content/article/168/37122.html> (last visited Dec. 4, 2015) (noting that less than half of the electricity and water projects had been completed and only six of 150 planned health centers had been completed, but one notable project that was on target was the massive U.S. embassy complex).

280. *Iraq in Ruins*, *supra* note 29 (“Despite Iraq being rich in natural resources and the US pouring money into its economy for over a decade, Iraqi infrastructure is constantly failing and people are forced to beg”); *Bleak Picture of Iraq Conditions*,

confronted with a debt crisis²⁸¹ and believing that they could have more successfully repaired their country,²⁸² and officials in Canada, Iraq, Japan, and other countries chastising the American rebuilding progress,²⁸³ U.S. officials affixed blame on insurgencies.²⁸⁴ Yet, the existence of insurgencies may have been predominantly attributable to the fact that a high percentage of Iraqis opposed the U.S. military presence in the country²⁸⁵ and that there were poor humanitarian conditions, which eventuated into a circular effect of violence, inferior reconstruction, more extensive expenditures for security and reconstruction,²⁸⁶ and additional opposition to the military occupation.²⁸⁷

The Pentagon offered a surprisingly optimistic view of the rebuilding process²⁸⁸ and the Bush administration and the U.S.

BBC (Mar. 17, 2008, 12:59 AM), *available at* http://news.bbc.co.uk/2/hi/middle_east/7299914.stm (last visited Dec. 4, 2015) (reporting that while still under the U.S. occupation, the Red Cross stated that the humanitarian situation in Iraq was “among the most critical in the world”).

281. ARNOVE, *supra* note 85, at 78.

282. Tiefer, *supra* note 207, at 43 (reporting that Barham Salih, Iraq’s minister of planning and development cooperation, stated that reconstruction efforts by US contractors had proceeded “very, very, very slowly so far” and postulated that Iraqis could have rebuilt needed infrastructure with more success).

283. *Id.*

284. See generally T. CHRISTIAN MILLER, BLOOD MONEY: WASTED BILLIONS, LOST LIVES, AND CORPORATE GREED IN IRAQ 132-50, 162-63 (Brown Little, 2006).

285. Bejesky, *Politico*, *supra* note 19, at 105; *What the Iraq Public Wants: A WorldPublicOpinion.org Poll*, PROGRAM ON INT’L POLICY ATTITUDES 4 (Jan. 31, 2006), *available at* http://www.worldpublicopinion.org/pipa/pdf/jan06/Iraq_Jan06_rpt.pdf (last visited Dec. 4, 2015) (noting that in January 2006, 87% of Iraqis wanted a timeline for withdrawal (64% Kurds, 90% Shia, and 94% Sunnis supported withdrawal). Overall, 47% of Iraqis supported attacks on U.S. troops (16% Kurds, 41% Shia, and 88% Sunnis supported attacks on U.S. troops)). *Id.* at 5.

286. MILLER, *supra* note 284, at 163; David Barstow, *Security Companies: Shadow Soldiers in Iraq*, N.Y. TIMES (Apr. 19, 2004), *available at* <http://www.nytimes.com/2004/04/19/world/security-companies-shadow-soldiers-in-iraq.html?pagewanted=all> (last visited Dec. 4, 2015).

287. ARNOVE, *supra* note 85, at 102-03 (stating that “[t]he [U.S.] is spending one billion dollars a week [for the U.S. military] in its occupation of Iraq, excluding the cost of ‘reconstruction’” for the benefit of US corporations and noting that “[t]his is in addition to the tens of billions of dollars already allocated for the invasion of Iraq, the tens of billions the [U.S.] pays to maintain its massive military arsenal in the Middle East and Asia, and the tens of billions the government spends to support ‘allies’ such as Israel, Egypt, Jordan, Turkey, Saudi Arabia, and the Emirates”).

288. GARTH S. JOWETT & VICTORIA O’DONNELL, PROPAGANDA AND PERSUASION 20-21 (4th ed. 2006) (noting that some US military authority apparently engaged in propaganda operations to misrepresent the success of the rebuilding

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military proclaimed that nation-building was one of the U.S. military's core missions. In December 2005, Bush issued NSPD 44, which sought to "promote the security of the United States through improved coordination, planning, and implementation for reconstruction and stabilization" in other countries.²⁸⁹ The *National Security Strategy* in 2006 stated that the U.S. military fights wars and rebuilds after the war.²⁹⁰ Military manuals, officials and personnel further promoted this nation-building mission.²⁹¹ The military did undertake these

process in Iraq by sending letters, allegedly written by US troops, to US newspapers to praise the rebuilding process, but when investigators tracked down the six troops whose names and hometowns appeared on several of eleven identical form letters, the six troops all denied writing the letters).

289. EXEC. OFFICE OF THE PRESIDENT, NAT'L SEC. PRESIDENTIAL DIRECTIVE 44, MANAGEMENT OF INTERAGENCY EFFORTS CONCERNING RECONSTRUCTION AND STABILIZATION 1-2 (2005) ("The United States has a significant stake in enhancing the capacity to assist in stabilizing and reconstructing countries or regions, especially those at risk of, in, or in transition from conflict or civil strife, and to help them establish a sustainable path toward peaceful societies, democracies, and market economies.").

290. EXEC. OFFICE OF THE PRESIDENT, THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA 16 (2006).

291. HEADQUARTERS, U.S. DEP'T OF THE ARMY, FIELD MANUAL 3-07, STABILITY OPERATIONS iv (Oct. 2008), available at <http://fas.org/irp/doddir/army/fm3-07.pdf> (last visited Dec. 4, 2015) (discussing "joint doctrine" and the role of the US military in supporting broader government operations: "[Stability operations encompass] various military missions, tasks, and activities conducted outside the United States in coordination with other instruments of national power to maintain or reestablish a safe and secure environment, provide essential governmental services, emergency infrastructure reconstruction, and humanitarian relief"); HEADQUARTERS, U.S. DEP'T OF THE ARMY, FIELD MANUAL 3-24, COUNTERINSURGENCY forward (Dec. 2006), available at <http://www.marines.mil/Portals/59/Publications/MCWP%203-33.5%20part%201.pdf> (last visited Dec. 4, 2015) (reporting that General David Petraeus and Lieutenant General James Amos explain that "[S]oldiers and Marines are expected to be national builders as well as warriors. They must be prepared to help reestablish institutions and local security forces and assist in rebuilding infrastructure and basic services. They must be able to facilitate establishing local governance and the rule of law"); Peter W. Chiarelli & Stephen M. Smith, *Learning from Our Modern Wars: The Imperatives of Preparing for a Dangerous Future*, 87 MIL. REV. 2, 6 (2007) available at http://www.army.mil/professionalWriting/volumes/volume6/january_2008/1_08_1_pf.html (last visited Dec. 4, 2015) (explaining "like it or not, until further notice the U.S. Government has decided that the military largely owns the job of nation-building."); Timothy Austin Furin, *Legally Funding Military Support to Stability, Security, Transition, and Reconstruction Operations*, 2008 ARMY LAW. 1, 13 (stating that with these new emphasized missions that there is a continuum on which operations should be categorized between "peace to crisis to conflict" and that "commanders must consider stability operations when planning each phase of any military operation."); Stigall, *supra*, note 99, at 40 (US Army Judge Advocate claiming: "Military assets are the preferred choice for the task of state-building . . .

obligations in Iraq, but political will might not best be represented by adding new realms of general expertise to core U.S. military missions because there are questions of international community and U.N. consent to specific “nation-building” missions, Congress’ constitutional authority to assent to new military missions,²⁹² the U.S. military’s choice to not emphasize educating its leaders with “rule of law” operations,²⁹³ and the fact that the military occupation was arguably not particularly effective in nation-building in Iraq.²⁹⁴

[and are] a generally indispensable element of any state-building operation . . . [T]he modern military’s diverse and robust contingent of professionals . . . [provide] ‘combat arms’ soldiers . . . [and] a host of trained professionals such as physicians, lawyers (Judge Advocates), and engineers—all of whom are uniformed service members. . . . They are able to operate in post-conflict states and assist in rebuilding or developing legal infrastructure.”); J. Porter Harlow, *Publishing Doctrine on Stability Operations and the Rule of Law During Conflict*, 2010 ARMY LAW. 65, 66 (“Soldiers and Marines are expected to be nation builders as well as warriors.”); Perhaps this new civilian function makes logical sense given the newly-obscure roles prevailing with the Pentagon’s eagerness to privatize everything, including military services, during the occupation. See generally Robert Bejesky, *The Economics of the Will to Fight: Public Choice in the Use of Private Contractors in Iraq*, 45 CUMB. L. REV. 1 (2014/2015).

292. It is true that Congress appropriated military funds for reconstruction and for military occupation. See Furin, *supra* note 291, at 22 (stating that “the post-conflict SSTR [Stabilization, Security, Transition and Reconstruction] operations in Afghanistan and Iraq are developing well since Congress has appropriated funds to accomplish the SSTR mission.” (This might not necessarily be a general sanction for the future.)).

293. Ronald T.P. Alcalá, *Vanquishing Paper Tigers: Applying Comparative Law Methodology to Enhance Rule of Law Development*, 2011 ARMY LAW. 5, 5, 11 (“[T]he military is not the designated lead for rule of law but will frequently serve as the de facto lead during stability operations.”).

294. Secretary of Defense Gates contended that the Department of Defense does not have sufficient personnel or the skill sets required to operate effectively in Iraq. Eric Talbot Jensen, *Post-Conflict Transition*, 14 NEW ENG. J. INT’L & COMP. L. 35, 37 (2007); Tiefer, *supra* note 207, at 1-8 (noting that the military occupation’s “nation building” and economic rebuilding operations were a drastic failure). One rationale for this role for the Pentagon role is that there is not enough civilian capacity in the U.S. government to address these issues. Dan E. Stigall, *The Thickest Grey: Assessing the Status of the Civilian Response Corps Under the Law of International Armed Conflict and the U.S. Approach to Targeting Civilians*, 25 AM. U. INT’L L. REV. 885, 900 (2010); Furin, *supra* note 291, at 1 (“First, DOD formalized a new stability operations policy that elevated stability operations to a core military mission on par with combat operations. Second, DOD broadened its military planning guidance to more fully address pre-conflict and post-conflict operations. Third, DOD developed a joint operations concept to serve as the basis for how the military will further support Stabilization, Security, Transition and Reconstruction (SSTR) operations.”); *Conference: From Autocracy to Democracy: The Effort to Establish Market Democracies in Iraq and Afghanistan: Panel 2: Building the Institutions of the Nation*, 33 GA. J. INT’L & COMP. L. 171, 189 (2004) (Professor Wiarda stating “I think neither the United States nor the international

Nonetheless, with CPA directives blatantly contravening restrictions of occupation law, the best protection against the reversal of the CPA's initiatives, rule frameworks, and potential shifts in property rights and power, is to ensure the security of those rules with a long-term military occupation.

VI. CONCLUSION

The invasion of Iraq in 2003 occurred after the Bush administration delivered six months of false allegations about Iraq possessing chemical and biological weapons, a nuclear weapons program, and ties to al-Qaeda, all of which were false.²⁹⁵ Due to the invasion, a humanitarian crisis unfolded and the Iraqi government was displaced, the U.N. Security Council adopted Resolution 1483 to affirm a mandate to administrate the country under occupation, but did not permit the CPA to unilaterally revamp Iraq's legal system.²⁹⁶ The CPA's involvement began as a progression that contended democratization and market economies were interdependent, but continued with more contentious reforms, including by deepening foreign investment, advocating for privatization, dollarizing the Iraqi economy, and enacting over thirty new economic codes with rudimentary and nearly unrestricted capitalist provisions.²⁹⁷ The CPA

agencies are very good at nation-building or even know what they are doing in most cases.”).

295. Ackerman & Hathaway, *supra* note 33, at 464; Bejesky, *Weapon Inspections*, *supra* note 33, at 350-69

296. In a March 26, 2003 memo, British Attorney General Goldsmith stated: In short, my view is that a further Security Council resolution is needed to authorise imposing reform and restructuring of Iraq and its Government. In the absence of a further resolution, the UK (and US) would be bound by the provisions of international law governing belligerent occupation, notably the Fourth Geneva Convention and the 1907 Hague Regulations.

Roberts, *supra* note 152, at 609. Goldsmith further added that the “imposition of major structural economic reforms would not be authorized by international law.” *Id.* Goldsmith is correct about occupation law restrictions, but the rest of his statement is a red herring. Resolution 1483 permitted a temporary occupation primarily to address humanitarian suffering and economic hardship, search for weapons of mass destruction, and ensure that Iraqis designed viable government to address humanitarian concerns, but absolutely nothing was said about the CPA dictating unilateral structural economic reforms. S.C. Res. 1483, *supra* note 93, ¶¶ 1, 4, 5, 7, 8(c)(i), 9 (noting that when the Resolution mentions “institutions” and reform initiatives, surrounding language affirms that it is the Iraqi people who determine their “own political future” and request that all UN members, UN organs, and “the Authority” were to “assist” Iraqis who will determine and establish their own institutions).

297. See *supra* Parts II, III, IV.

broadly construed the explicit language of Resolution 1483 and imposed unilateral dictates without Iraqi support and without a democratic government, while, at the same time presiding over an abysmal rebuilding process, intensified violence and insecurity, and corrupt relations with contractors and appointed representatives of local Iraqi bodies.²⁹⁸ The CPA assumed it possessed all the answers to Iraqi preferences even before a democratic government was elected.²⁹⁹ A 2004 World Bank report specifically addressed this issue, recognized the lack of Iraqi public ratification for economic reforms, and contended that Iraqi democratic will should not alter CPA dictates because investor confidence was paramount:

Crucial to investor confidence is the credibility of the transitional and new governments' approach to the existing legal framework and the predictability of their basic policies. Such sustainability will require achieving adequate consensus at various levels on an underlying

298. NOAH FELDMAN, WHAT WE OWE IRAQ: WAR AND THE ETHICS OF NATION BUILDING 77-80 (2004); Richard B. Bilder & Michael J. Matheson, Book Note, *The International Struggle over Iraq: Politics in the UN Security Council, 1980-2005*, 102 AM. J. INT'L L. 687, 691 (2008) (“[T]he essentially unilateral effort of the United States since [the invasion] has resulted in even worse violence, insecurity, and corruption.”); Patterson, *supra* note 183, at 468, 474 (noting that the CPA did not comply with occupation law, which endows a right to remedy wrongs); *see also* Zahawi, *supra* note 7, at 2298. *See generally* Part IV(D), V.

299. The White House *Future of Iraq* project was already planning for an occupation and reforms as much as a year before the invasion. Hassen, *supra* note 144. *See generally* Newt Gingrich & Mark Kester, *A Security Strategy of Transforming Societies: From Stabilizing to Transforming Societies as the Key to American Security*, 28 FLETCHER F. WORLD AFF. 5 (2004) (unabashedly contending that the US should transform societies around the world). Common Iraqis opposed the occupation of their country and from the perspective of Americans, Mr. Bush left office with one of the worst presidential approval ratings in history and it was specifically because of Iraq and the economic recession, which might have been partially due to the excessive spending for the Iraq war. Bejesky, *Politico*, *supra* note 19, at 31, 105. The extrapolation of occupier power and unilaterally-conceived mission of “what is best for the Iraqi people,” seems to be based on distorting occupation law and an assumption of omniscience about Iraqi desires conjoined with myths. Roberts, *supra* note 152, at 601 (remarking of the depiction of the occupant as a bastion of progress can beget a “dangerous mix of crusading, self-righteousness, and self-delusion”). Some assumptions, in the author’s opinion, during the existence of the CPA seem to include: “We believe that we can install democratic institutions,” “We believe that market mechanisms and capitalism are the essence of freedom,” “We believe Iraq’s public sector requires privatization for the good of the Iraqi people,” “We believe foreign investment is needed is essential for your economic well-being and that foreign investment should be given national treatment protections,” and “We believe foreign oil company investment is needed.” Meanwhile, it was not the “Coalition” that was imposing dictates, but the “United States,” and more specifically the Bush Administration.

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economic strategy. For continuity, the sovereign Iraqi government will need to confirm its broad support for legislation issued by the Coalition Provisional Authority and clearly signal that pending administration regulations critical to the implementation of fundamental legal provisions will be developed and implemented.³⁰⁰

If Iraqis had been in a position similar to other Organization of Petroleum Exporting Countries (OPEC) (with a cash-rich state-owned oil industry) so that revenues could have been generated from their own oil wealth, Iraqis would not have needed foreign investment. This was actually an insurmountable possibility because of the debt Iraq held throughout the period when the Security Council restricted Iraqi oil sales. Because of Iraq's financial position at the time of the 2003 invasion, new laws were imposed by the CPA, including frameworks that benefited foreign corporations, and likely became socialized and solidified³⁰¹ with a long-term military occupation. If the populace is not content with its new society, laws, and institutions, conditions could be ripe for insurgencies because some percentage of the population lost power, wealth, government benefits, employment, and habitable conditions.³⁰² Indignation may be even more pointed if perceptions of disenfranchisement are attributable to a foreign invasion and an unwarranted military occupation.³⁰³ If commentators concur that corruption is immoral, harmful to public interest, and undermines justice and fair contract and property law protections,³⁰⁴ it

300. *Building a Sustainable Investment Climate in Iraq* ¶¶ 33-34 (World Bank, Reconstructing Iraq Working Paper No. 1, Sept. 27, 2004).

301. Mills, *supra* note 140, at 199.

302. See Stephens, *supra* note 29; *Iraq in Ruins*, *supra* note 29.

303. Perceived discrimination may be heightened when these events occurred in a country where most of the population is poor, aspires for a better life for one's family (which might best be attained by developing favorable connections to the occupying authority), and is beholden to a social and economic reality that is enforced by three hundred thousand American troops and security force personnel. It should also be remembered that the Pentagon was attempting to covertly manipulate Iraqi public opinion by employing advertising and consultancy firms to place favorable pro-US occupation propaganda in Iraqi newspapers and also running its own media outlets in Iraq. See Robert Bejesky, *Public Diplomacy or Propaganda? Targeted Messages and Tardy Corrections to Unverified Reporting*, 40 CAP. U. L. REV. 967, 1029-49 (2012).

304. Omar Azfar, Young Lee & Anand Swamy, *The Causes and Consequences of Corruption*, 573 ANNALS AM. ACAD. POL. & SOC. SCI. 42, 46, 53 (2001); Peter Egger & Hannes Winner, *How Corruption Influence Foreign Direct Investment: A Panel Study*, 54 ECON. DEV. & CULTURAL CHANGE 459, 460 (2006); M. Shahid Alam, *Anatomy of Corruption: An Approach to the Political Economy of*

is no wonder that Iraq has recently been torn apart by sectoral allegiances amid claims of discrimination and suppression.³⁰⁵ Sunnis, Kurds, and a high percentage of Shia wanted Prime Minister Maliki, who operated as a dictator and corruptly enriched himself at public expense,³⁰⁶ to resign,³⁰⁷ but he practically had to be torn kicking and screaming from office,³⁰⁸ only to be appointed vice president a few days later.³⁰⁹ Maliki has been the target of hostility, but deeper problems must be resolved to achieve a peaceful reconciliation to the present crisis. Economic viability for all Iraqis and ending economic and political discrimination should be at the core of discussions.

Underdevelopment, 48 AM. J. ECON. & SOC. 441, 453 (1989).

305. See Sandy Berger, *U.S. Must Forge New Ties With Iraq to Tackle ISIS Threat*, TIME (Aug. 17, 2014), available at <http://time.com/3130983/sandy-berger-iraq-isis-maliki/> (last visited Dec. 4, 2015) (Sandy Berger, national security advisor during the Clinton administration, stating that “Maliki had governed in such an overtly anti-Sunni fashion that the Sunni tribes in the north had come to hate him more than they feared ISIS”); Al-Ali, *supra* note 30.; Maginnis, *supra* note 30.; Damon & Tawfeeq, *supra* note 30.

306. See *supra* Part I.

307. Renae Merle, *Air Force Erred with No-Bid Iraq Contract, GAO Says*, WASH. POST (Nov. 29, 2005), available at <http://www.highbeam.com/doc/1P2-82607.html> (last visited Dec. 4, 2015) (“Our Defense Department has continued to pay, through pliant contractors, for a flock of Iraqi political exiles as our paid political agents in Iraq”). Perhaps it is possible to direct a foreign country’s policies after a government holds elections as elected politicians and appointed bureaucrats may be amenable to and beneficiaries of foreign influence. Even politicians who have been democratically-elected can become amenable because that influence is often what empowered them in the first place. Pepe Escobar, *The Roving Eye: Behind the Anbar Myth*, ASIA TIMES (Sept. 14, 2007), available at http://www.atimes.com/atimes/Middle_East/II14Ak04.html (last visited Dec. 4, 2015) (noting how Maliki, as the US’s puppet, has abused his office).

308. See Bozorgmehr Sharafedin, *Why Iran Has Finally Let Go of Maliki*, BBC (Aug. 13, 2014), available at <http://www.bbc.com/news/world-middle-east-28777142> (last visited Dec. 4, 2015).

309. *What Do Iraqi Leaders Hope to Hear From Obama’s Strategy?*, PBS (Sept. 10, 2014 6:06 PM), available at <http://www.pbs.org/newshour/bb/iraqi-leaders-hope-hear-obamas-strategy/> (last visited Dec. 4, 2015).