**Lustration in Iraq: Regime Change as Exclusion and Control**

Regime change may entreat the removal, from the public sector, of those involved in human rights abuse and corruption via a transitional process that aims for civic propinquity and the emblematic ‘purification’[[1]](#endnote-1) of the public sector (David, 2006). Lustration has been either ‘…pivotal to the successful consolidation of state structures and the social basis for the establishment of democracy’ (David, 2006: 348) or has de-valued accountability, undermined security and abandoned ethical dimensions through ‘…orgies of revenge and public humiliation’ (Chiu 2011: 444). Lustration processes are essentially laws of ‘discontinuity of employment…’ (David & Choi, 2006: 340) that operate in variant ways regarding methods of dismissal, vetting procedures, procedural guarantees and evidential robustness (Horne, 2014). They stretch from the relative maintenance of the status quo to explicit regime rupture.

In Iraq lustration is commonly known as de-Ba’athification and was normatively presented as transgressor removal in order to mask the desire to develop neo-liberal practice[[2]](#endnote-2), undermine Arab nationalism and remove those opposed to federalism, promoted secular values or challenged the influence of Iran in the domestic politics of Iraq. An alliance emerged between exogenous and endogenous forces linked by their desire to undermine Ba’athism through proxy war mechanisms. Lustration expanded the spaces of war (Sarat and Kearns, 1995) and emerged not as ‘… an impartial arbiter of conflict’ … but … ‘as an instrument of power’ that perpetuated ideological encounter via other means (Jones, 2016: 224). In sum, lustration evolved through ‘different social practices…’ that ‘… suppress different ways of organising legal, moral, and political responsibility’ (Werner, 2010: 61).

In Iraq, lustration was a form of ethno-sectarian and identity power redistribution from generally Sunni Arab to Shia and Kurdish over-representation in the public sector (Wehrey, 2014). That mission favoured an ethno-sectarian regulatory fit to be achieved through illegally banning the free press and electoral candidates (Al-Ali, 2014; Haddad, 2011; Ismael and Fuller, 2009; Katzman, 2009). Iraq emerged as a highly interventionist state that was weakened by significant opposition. Such threat persistently drove practices of sectarianized governance that developed the new power holder’s capacity to manipulate and control public resources. The capacity for modes of democratic governance to emerge was initially undermined by the imposition of a Western ‘fix’ that further entrenched Iraq’s complex, ethno-sectarian and tribal loyalties and their manipulation[[3]](#endnote-3) (Brinkerhoff and Mayfield, 2005). An example of Western-led regime change emboldening ethno-sectarian entrepreneurs by providing ‘the main vector through which they entrench their predominance’ (Fakhoury, 2014: 134).

Lustration is not a static concept or a fixed set of practices but instead reflective of the power and capacity of those governing to determine both the fate and intention of those allied to the previous regime. It is within the principle of design, the objectives of implementation and the agency of agenda setting that the outcomes of and the reaction to lustration processes are established. In learning more about ethno-sectarian governance we read lustration as a system that produced variant experiences, ethno-sectarian classifications, modes of discipline and control (Prakash and Potoski, 2016). Understanding those processes requires measurement of lustration as a site of contestation and the capture of voices from opposing groups in order to achieve the required layer of analysis. We adopt Gready and Robins (2014) methodological approach that considers power as intersecting relationships of control and affect, as defined via the mediums of, delivery, intention and counter-reaction. Lustration is here understood as the conveyance of state power as the outplaying of human agency, skewed social relations, fraud, political authoritarianism, variant law making and sectarianized political agency (Thomson and Nagy, 2010: 21). In understanding how lustration fashions and shapes political space we understand modes of objectification and exclusion as ‘the literal mapping of power relations…’ (Sibley, 1995: 11).

We do not question the removal of transgressors within the Ba’ath regime but instead acknowledge that lustration policies included acts that denied economic well-being, the security of economic activity and denial of full-citizenship to those who were guiltless or whose transgressions was unproven. How actors constructed the classification of those who were deemed as peripheral to the new political order is not only allied to an understanding of symbolic violence but is key to interpreting the performativity of doing so and the processes through which ‘… men and women … simply fall short, in the eyes of their judges, of the right way of being and doing’ (Bourdieu, 1990: 231). In examining the process through which the concentration of state power was achieved we analyse the exchange of power from exogenous projection to endogenous control and how the measurement of state practice is an analysis of contestation and purposeful friction.

**The Emergence of Lustration**

The invasion of Iraq and the subsequent laws of regime change were normatively presented as democracy building through a process that could only appear reasonable if exogenous design via the Coalition Provisional Authority[[4]](#endnote-4), was paralleled by the agency of endogenous political control through an Iraqi-led transitional government (Chandrasekaran, 2006; Dawisha, 2009; Ó Tuathail, 1996). Each set of adherents presented the legality of such power exchange as a normative process that masked the intentions of neo-liberal progression and hegemony-building (Gregory, 2011; D’Arcus, 2014; Kedar, 2014; Morrissey, 2011).

Lustration through ‘… new technologies of order and regulation’ (Comaroff and Comaroff, 2006: 3) was proxy war based. Lustration as a product of regime change in Iraq, is essentially a study in the transformation of politico-military relations and the pursuit of an external agenda delivered through domestic elites. Normatively dressed as even-handed law-making its true meaning was to construct the purging of public space as ‘necessary’ as there was an ‘other’ that was ‘… beyond regulation, beyond reason, beyond comprehension’ (Gregory, 2008: 9). Lustration aimed to de-legitimise opposition through a legal form that ‘supplement(ed) (the) use of force with less destructive and less costly-means’ than war (Kennedy, 2006: 66). In managing the intentions of war through post-invasion law making lustration developed as ‘a weapon designed to destroy the enemy by using, misusing, and abusing the legal system and the media in order to raise a public outcry…’ (Tiefenbrun, 2010: 32). Such interactions not only intentionally molded spaces of exclusion but are a reminder that force is the phenomena of law that ‘… has no relation to law, or maintains such a strange relation to it that it may just as well command the ‘droit’ that excludes it’ (Derrida, 1992: 58).

Prior to the invasion of Iraq De-Ba’athification had been under of the remit of the Democratic Principles Working Group (DPWG)[[5]](#endnote-5) and the US State Department. DPWG agreed that the Ba’ath Party would be disbanded and that those who aided or committed human rights abuses would be removed from public office. This was allied to the approach of Denazification that aimed to rid Germany and Austria of the structures and symbols of Nazism through the removal of high ranking Nazis and [SS](https://en.wikipedia.org/wiki/Schutzstaffel) members. There were executions of key protagonists but in the main the internment of 400,000 and re-education programmes achieved a post-conflict settlement. Such an approach was based upon the recognition that former Nazis of middle to low rank were vital to societal revival and its administration. As with Germany it was envisaged, by the DPWG, that dismissals were to be paralleled by reconciliation mechanisms such as tribunals and truth-based inquiries. Transition would preserve the public sector management classes ‘for the sake of continuity and efficiency while providing stages of oversight and avenues of appeal for abuses’ (2002: 61). The Ba’ath Party would be outlawed until it had gone through restructuring and a revision of its behaviour. Purging was assessed as a ‘draconian measure’ driven by ‘witch hunts based on rumors and allegations…’ that would in effect ‘deny valuable skills, historical knowledge, and experience’ (2002: 61). What the DPWG recognised was that Ba’ath Party membership was a prerequisite for high and mid ranking government positions and in many cases membership was involuntary.

Such an approach that drew upon various transitional justice readings was abandoned on May 16, 2003, when the U.S. proconsul in Iraq and head of the Coalition Provisional Authority, Paul Bremer issued Order No. 1 which banned the Ba’ath Party and allegiance to it and removed categorized members from public employment (Hatch, 2005). Full senior party members of the Ba’ath Party holding the ranks of ‘Udw Far’ (Branch Member), ‘Udw Qutriyya (Regional Command Member), ‘Udw Shu’bah (Section Member) and those at the level of ‘Udw Firqah (Group (Division) ‘Udw Friqah,, ‘Udw Shu’bah, ‘Udw Maktab (Bureau Member) and ‘Udw Qiyadah (Command Member) were to be removed from their positions upon appeal. The initial implementation of Order 1 is estimated as leading to the removal of 35,000 to 100,000 public sector employees[[6]](#endnote-6). Importantly, Sunnis were more likely than Shia members of the Ba’ath Party to be removed[[7]](#endnote-7).

The removal of Ba’ath Party members was tied to the exclusion of people for their membership in or affiliation with the Party rather than their individual responsibility[[8]](#endnote-8). Collectivized guilt was to become a representational dilemma and justice-centred deficiency due to the failure to establish the meaning of guilt beyond ranked membership. The exclusive approach (the form of lustration most related to regime rupturing) founded claims of injustice among those who denied harm causing but also stimulated grievance among victims of the Ba’ath regime concerned by inaction towards evident human rights abusers who because of their low party rank remained unpunished. What emerged was a form of regime change through which removal permitted the new regime holders to eliminate opponents and place their supporters into public positions. As Daly (2014: 65) remarked;

‘…those who were previously denied the spoils of oppressive governance are now able to fill the empty offices, classrooms and barracks, resulting in a form of justice – or at least come-uppance’.

Bremer handed over the ‘spoils of oppressive governance’, when he appointed Ahmad Chalabi, a vehement supporter of Order 1, to head the Supreme National De-Ba’athification Commission in November 2003 (Dodge, 2013). The SNCD consisted of members of political groups that included Chalabi’s Iraqi National Congress (INC), al-Majlis al-A’ala, [Patriotic Union of Kurdistan](https://en.wikipedia.org/wiki/Patriotic_Union_of_Kurdistan), al-Islami al-‘Iraqi, Islamic Supreme Council of Iraq (ISCI), Sayyid Ammar al-Hakim (a faction of Hizb) and al-Da’awah al-Islamiyyah. Predominantly, Shia and Kurdish groups and the most vigorous opponents of Ba’athism. This coalition of new regime holders extended, through lustration, the strategic political and military goals of invasion that included the privatization of the economy and de-Ba'athification as a part of an overall occupation tactic (Kittrie, 2010, Luban, 2010). There was no ideological difference between the exogenous design of Order 1 and the endogenous-leaders regarding the structures that emerged. The new political elite appreciated that the law-space nexus placed under their control offered capacity and the opportunity to undermine dissent and political challenge. The uncompromising nature of their approach part-infused violence from Sunni groups, such as [Ansar al-Islam](https://en.wikipedia.org/wiki/Ansar_al-Islam), [Political Council for the Iraqi Resistance](https://en.wikipedia.org/wiki/Political_Council_for_the_Iraqi_Resistance), [Islamic Army in Iraq](https://en.wikipedia.org/wiki/Islamic_Army_in_Iraq) and the Fallujah Military Council, due to the unfolding nature of Sunni exclusion from public employment and state resources.

**An Outsider Researching Inside Iraq**

The author made 4 trips to Iraq and met Iraqi politicians and human rights advocates in Europe prior to those trips. The first meeting was attended by political parties and prominent civil society representatives. The author was invited to that meeting as chair of the Northern Ireland government’s Review Panel: Employers' Guidance on Recruiting People with Conflict-related Convictions. During meetings the delegates asked the author to advise on how to either extend vetting (lustration) or challenge what was viewed as its abuses. Subsequently, the author was invited to four national/regional events at which issues of governance, peace-building and territorial disputes were discussed and debated. As an outsider the author was aware of their limited knowledge of lustration in Iraq and that much of what was available was not in English. The material regarding internal debates and discussion was generally in Arabic and Kurdish. The author appointed two researchers in Iraq to prepare materials on lustration policies. Both wish to remain anonymous and are unknown to each other.

Each conducted preliminary work on the issues of lustration. One was an adherent of the other a critic of lustration. To ensure quality, rigour and familiarity with competing perspectives the author received a report on lustration from each researcher. The author ensured that those reports were not sent electronically, so as they could not be intercepted, but collected in person in the UK. At the first two events attended in Iraq the author and the researcher, who was supportive of lustration, organized interviews with adherents. The last two events attended were the sites at which those critical of lustration were interviewed. This ensured that the researchers did not meet. The author did not know who they were meeting until they attended the interview, although respondents had been chosen by the researchers as either lustration adherents, reformers or rejectionists. The only exchange, when interviewing interviewees was first names and the respondent’s designation which they could volunteer such as the name of a political party or a term such as human rights activist. The need for security and anonymity was vital given widespread violence in Iraq. A rigorous process of determining safe spaces to meet and interview was vital to encourage respondent participation.

The context of carrying of qualitative research in war zone is problematic both in terms of safety of researcher and researched. The author was on two occasions an object of violence that included a thwarted attack by Al-Qaeda upon a conference centre in Kirkuk. There was a dualistic sense of being an outsider but also having some appreciation of the emotions and/or trauma that political violence produces. The author, who is from Northern Ireland, has conducted research on political violence and been subjected to it and was therefore cognizant of working with those who were either the perpetuators or victims of abuse or both. Although, a third party to Iraq I was cognizant that much of what I heard affected my own emotional sensitivities and stimulated memories of violence.

Fundamental to the conduct of the research was the need to ensure that those interviewed did so anonymously and safely. The author, when in Iraq, could not travel freely and was constantly surrounded by security personnel. However, when in hotels and conference centres, I was presented with the opportunity to meet respondents in private rooms. The interviews took place at events organized to bring hundreds of political actors and prominent NGO actors together. Given the scale of these events, in terms of attendance, those interviewed could meet in a private room without being seen with the researcher. It was agreed with each respondent that the author would not been seen with them in public or have conversations with them during the events. Invitations, from interviewees to dinner, drinks or informal conversations were politely rejected. The interview material was typed up in situ and encoded by security software that could only be read on a computer at the author’s place of work. The interviews were spread across 16 days with no more than 4 interviews per day. These were spread across 4 hour intervals so as to minimize the risk of interviewees meeting each other. The private room used was different for each interview. The research work was at times draining due to the desire to ensure anonymity as well as interviewing some who were viciously hostile to their political opponents and others who were antagonistic to ‘outsiders’. At times interviewees vented and raged about being abused by the previous and present regimes. However, most undertook the interviews as an opportunity to express their opinions and concerns.

The interviews were conducted in English but the questions were also written in Arabic and Kurdish in order to aid communication. A further problem was that some female participants were not permitted or did not wish to be interviewed on their own by a male. It was proposed that another person would accompany the female participants as would be customary but this was not undertaken as the respondent would not have been interviewed anonymously. In two instances female respondents wrote their answers in private and these were handed in sealed envelopes to the author who then typed them into the encrypted software and immediately destroyed the written responses. Despite these limitations and working in a risk-laden environment anonymized interviews conducted between 2008 and 2014 were obtained with 42 respondents including Iraqi politicians, members of the legal profession, domestic and external NGOs and prominent members of the Sunni, Kurdish and Shi’ite communities. It was agreed given security concerns that the material would not be published for at least 5 years. This is to the author’s knowledge the most significant body of interview material regarding attitudes to lustration in Iraq written in English. The study captured those who had implemented de-Ba’athification, those who had opposed it and those who had been expelled under it. The interviews were also important given the issue concerning the reliability/availability of verifiable records and the maintenance of accurate accounts held by the bodies that regulated lustration.

**Lustration in Practice**

The defeat of the Ba’ath was undertaken through invasion, on the one hand, and laws of lustration, on the other. Both phenomena inter-linked to achieve the same objectives that included regime change, marginalization, symbolic invisibility and powerlessness. The force of lustration in Iraq was legal mobility originated by occupying forces and delivered by endogenous actors. In a sense this is the exchange of power between the exongenous and endogenous within an aura of domestic capacity to deliver a legal system that aims to complete what invasion began. Therefore, lustration is not mere encounter between international forces over domestic power. It was not merely transnational governance that structured post-invasion space but the development of a domestic clientage that increasingly defined forms of control.

Lustration sits neatly within the emergence of the landscape of liberal war as it presents an opportunity to disguise the intentions of invasion which were the spread of neo-liberalism and global military dominance through presenting invasion as securing the world from nuclear war, promoting democracy and undermining state tyranny. Lustration as a form of counter-insurgency aimed to remove those who had engaged in abusive acts but as it cut deeply into the space of public sector employment it was increasingly an attack upon an ideology that favoured public ownership and a socialistic form of Arab nationalism. As the policy of lustration was being outplayed the Coalition Provisional Authority, in agreement with the emerging domestic elite, ordered the privatisation of 200 Iraqi state-owned companies, the reduction of corporate tax from 45 percent to 15 percent and the right of foreign-controlled firms to control all assets and profits. Such pro-market policies and the deepening of lustration were also unpopular among the majority of Iraqis who preferred the maintenance of the previous economic system and a less brutal form of public sector vetting (Foote et al; 2004).

A feature of lustration is the classification of individuals regarding their complicity with a former regime. The construction of ‘guilt’ is based upon quantifying what are sometimes complex concepts such as character, responsibility, political affiliation, conduct and threat. The administration of public sector vetting is delicate when it leads to processes of public shaming and implied recidivism that are rejected by those expelled or encouraged by those who have been victimized by the previous regime (Malamud-Goti, 1990). There is no doubt that lustration produces value in that it removes those whose actions undermined democracy and led to oppressive acts. However, that value can be lost if guilt and complicity is directed at those whose involvement with the previous regime was forced, marginal or even non-existent and when lustration becomes the expression of partisanship (Kaminski and Nalepa, 2006; Stover et al, 2005). The governance of lustration in this instance was coercive, burdensome and an abuse of protection mechanisms that sated fair treatment (Stover et al, 2008; Visser, 2007). Furthermore, de-Ba’athification threw into relief the failure to design transitional justice mechanisms, especially regarding victims. An inadequate[[9]](#endnote-9) approach to past abuses meant that de-Ba’athification was embodied as the key response to oppression and victimhood even though it was neither structured nor capable of delivering justice demands tied to such all-embracing desires. Given that other transitional justice arrangements failed to evolve the new elite effectively expanded its power base and popular support by locating the injustices of the previous regime that it could legally respond to.

There have been two lustration acts of De-Ba’athification that are commonly known as Order 1[[10]](#endnote-10) (advanced in 2003) and the Accountability and Justice Act (AJA) (passed in 2008).

**Embedding and Reproducing the Exclusive System: From exogenous design to endogenous delivery**

Once established, SNCD illegally extended its remit by directing lustration at more levels of the Ba’ath Party including Active Member (‘Udw ‘Amil) and Trainee Member (‘Udw Mutadarrib). They also prohibited the hiring of those who had left or been expelled from the Ba’ath Party prior to invasion, even if they had shown opposition to it or had been victims of the previous regime. These political groups, somewhat erroneously, could choose former Ba’athists, usually Kurds and Shias, to be exempted from vetting which indicated a growing governance of sectarian and socio-economic patronage centred control. This testified to a variant form of categorization in which socio-legal space was quantified not by individual rights but via ethnic election and the capacity to pick and choose those to be punished.

The hegemony of the SNCD was furthered by the appointment of technical staff, linked to these political groups, who had privileged access to records of human rights violation. The public goals of the SNCD were to remove senior members, dissolve the Ba’ath Party, offer an appeal process and remove traces of the Ba’ath Party. Removing such traces was adopted by the SNCD through their own interpretation of vague concepts such as respect for dictatorship and authoritarianism, disrespecting others opinions and agreeing to the opinions, methods, thought and lifestyle of those opposed to the emerging regime.

Control of the SNCD created a site within which endogenous actors could represent themselves as those most capable of redressing the excesses of the Ba’athist regime. The zeal for de-Ba’athification was testified to by interviewees who noted that before Order 1 de-Ba’athification offices were established by domestic political groups. Several political parties, without legal authority, including the Supreme Council for the Islamic Revolution in Iraq, the Islamic Da’awah Party, and the Iraqi Communist Party, instituted a mechanism for vetting applicants to public sector jobs in places that they dominated. Party officials would issue letters of recommendation (kutub ta’ayid) to applicants through a form of patronage as political parties scrambled for the resources of the state and its institutions. In upholding and expanding the exclusive system the aim was to de-legitimize the previous regime and show that punitiveness would be collective and that power was being re-located. A system in which human rights standards ‘namely the right to expression, the right to be free from discrimination and the oft-questionable right to work in the public sector’ (David, 2006: 350) were undermined.

The due process mechanisms defined under Section 4 of Order 1 regarding appeals criteria that included written notification of dismissal, a reasonable period to appeal in person or in writing, a detailed explanation of the reasons for removal and information regarding the procedures for appeal were unevenly administered. Iraq’s Governing Council’s Decision 21[[11]](#endnote-11) stated that a sub-committee within SNCD would be developed to ensure that dismissals could not serve party political interests. Such safeguards were to be undertaken via a ‘…fair and impartial entity independent of the individual or organization that rendered the adverse decision, which shall promptly render a written decision in the case’ (Coalition Provisional Authority, 2003: 1). SNCD decisions regarding dismissal were to be signed off by two seconded judges. In reality their autonomy and procedural authority were improperly implemented with other safeguards diluted by introducing expulsions based upon unclear definitions of the abuse of national wealth and aggressive and criminal behavior. Via their amassing of influence and control the SNCD developed ‘undefined powers to influence political participation, civil service recruitment, social status, and the economic welfare of many thousands of Iraqis’ (Sissons and Al-Saidei, 2013: 12).

In the 2005 elections for the transitional National Assembly, the Shi’ite United Iraqi Alliance (UIA) vote increased which permitted SNCD to operate with less hindrance. Leaders in the UIA-Kurdish alliance were supportive of further purging and in a 7-point plan advanced their governing platform through ‘a reform of the institutions of the state, which meant the intensification and implementation of the de-Ba’athification measures’ (interviewee human rights lawyer). Post-2005 the rise and amalgamation of political grouping such as the Supreme Council for Islamic Revolution, the Da’awah Party and Sadrists, despite ideological and regional differences, was linked to an increasingly unified de-Ba’athification stance.

In 2008 following discord between parliamentary blocs over de-Ba’athification, the Iraqi Council of Representatives passed Law No. 10 or the ‘Law of the Supreme National Commission for Accountability and Justice’[[12]](#endnote-12) (Qanun Al-Hay’ah Al-Wataniyyah Al-‘Ulya li Al-Musa’alah wa Al-‘Adalah), better known as the Accountability and Justice Act (Qanun Al-Musa’alah wa Al-‘Adalah (AJA)). This legislative act of the Iraqi Council of Representatives extended De-Ba’athification to the judiciary but in recognition of the abuses of Order 1 planned to reinstate those of low rank in the Ba’ath Party to pensions or employment. An additional legal capacity that lacked transitional vision, expansion of the remit of Order 1, the removal of immunity from lustration practices for sitting government ministers, a sense that the SNCD was merely re-named as opposed to reformed, that former Ba’ath Party members could not return to specific ministries and that the formulation of appeals was imprecise and purposefully ambiguous. Those who were employed in non-managerial posts or below Division Member rung could theoretically return[[13]](#endnote-13) or continue in their employment but not to the uppermost strata of the Judicial Council and Finance and Foreign ministries.

The SNCD morphed into the Supreme National Commission for Accountability and Justice (SNCAJ). SNCAJ powers under Article 13 of AJA were enhanced and widened with regard to recording human rights abuses, seeking reparation for victims and pursuing human rights abusers. However, the process of de-Ba’athification remained primary. As with Order 1 the Ba’ath Party and related ideology or acts remained proscribed. Right to appeal remained nebulous with regard to the interpretation of Ba’athist sympathies. Pension provision grew but was viewed by some interviewees as purging ‘in kind’. The continuous and ad hoc nature of exclusion was aided by Article 7 of the Iraq Constitution which precludes Ba’athists from political life and the requirement to uproot related ideas, while Article 135 prohibited Ba’athists from holding ‘sensitive posts’. The language of AJA endured with imprecise definitions of what constituted Ba’athism and its removal from public life.

The appointment of seven new commissioners to bring independence of leadership via a Court of Cassation linked to an independent judicial appeals chamber was undertaken. The appointment of commissioners was based upon power-sharing procedures which meant that 3 Shia and a Kurd member held authority. There was also a failure to recruit commissioners with adequate legal training. The SNCAJ committee operated privately and rarely met in full session. The provision in the 2005 Constitution that it was to be controlled by a parliamentary committee was indistinct and failed to evolve. A particular problem for the parliamentary committee was the lack of procedural knowledge and an inability to challenge the authority of SNCAJ. Procedures for re-employment and exception remained indistinct and no time limit on vetting practices, a value of transitional justice, was defined. Despite some improvements it was summed that AJA ‘…entrenched the prevailing system, but few people knew enough to recognize it’ (Sissons and Al-Saidei, 2013: 18) and 'additionally, some of the law’s innovations – such as new focus on the judiciary or the introduction of an in-house prosecutor function – risk exacerbating these flaws, rather than improving them’ (Sissons and Al-Saidei, 2013: 13).

Lustration and the failure to invoke its own checks, balances and due process mechanism was not merely an exercise in corruption but was the medium through which legal space was subverted. That subversion denied individual rights of fair treatment which stimulated an ethnic space of divergent treatment based upon sectarianized decision making. There was a growing acknowledgement that ‘almost no politician understood de-Ba’athification’s complex procedures and framework, nor could they access information about alternative models‘ (Sissons and Al-Saidei, 2013: 18). Lustration emerged as due to ‘…the instrumental use of lustration by political parties to remove or discredit rivals… to undermine the legitimacy of the measures and threaten the foundations of democracy’ (Horne, 2014: 499). In explaining the agency of endogenous actors the US diplomatic service in at least one exchange, posted via WikiLeaks, noted the aims of domestic leadership regarding de-Ba’athification;

‘Actually de-Ba’athification (in the sense of the purging of the state of members of the ancien régime) was completed by '04 by the U.S.-led CPA. The de-Ba’athification you are referring to is the subsequent Shia/Kurdish attempts to thwart a potential comeback by Baathists and keep Sunnis in general in check.[[14]](#endnote-14)’

**Contested Voices**

We now shift from describing lustration to evaluating practice by accounting for the agency of lustration as act and social re-construction. We here read de-Ba’athification as a governance of rhetoric and inter-subjective claims and interpretations between those who wished to stigmatise and those stigmatically shamed by lustration. A form of habitus conditioned through the enactment of power and the negative experiences of that power redistribution (Bourdieu and Wacquant, 1992). The response of interviewees is linked to their position as it relates to their experience of state resource re-alignment. The ejection from the public space of state-funded employment stimulated both senses of control and marginalization linked to empowerment and disempowerment. The social distance to state control of the public sector employment determined the narratives of explanation, sectarianism, burden and revenge. Those narratives form the conduct and experience of otherness.

By their very nature these are voices of domination and resistance linked to variant experiences of menace which aims to either remove the danger of Ba’athism or challenges the risk of exclusion therein. Lustration conditioned experience and the outplaying of state regulation highlighted how its practices created a symbolic and real segregation of ethnic groups regarding legal treatment. In a sense capturing voice is based upon presenting the material and discursive borders created between those omitted and those with the power to exclude. What we observe is an elite whose capacity to exclude is understood as unproblematic to them and the voice of the excluded who present their exclusion as unfounded marginality.

*De-Ba’athification as Cause*

What we witness when examining the interviews with lustration adherents and practitioners is their understanding that lustration was a site within which to construct hegemony not only through control of the process but by defying reconciliatory strategies and locating the power to neuter opposition. The power to humiliate and control defined the epithet of wider legal authority and narrow sectionalised motivations through a range of practices and symbolic approaches. For this cohort the administration of lustration was accompanied by the position that all members of the Ba’ath Party (excluding those forced to join) were a cabal of manipulators who required suppression. Such a narrative denying the reality of forced and automatic membership on gaining a public sector post. As explained by a member of the Islamic Da’awah Party;

‘The rope of a lie is short. The Ba’athists are ideology but pretend to be people. If you were in any ranks of Ba’ath you are Saddamist and you bring misery on Iraqi people. I do not care for blood on the hands, all Saddamists must be removed. I don’t care what they have not done. It makes no difference. I do not care if they did no wrong. The Ba’athist is a corrupt person and ideology.’

Further, the erroneous idea was advanced that Sunnis represented the politics of Ba’athism and that lustration is not a transitional reconciliatory process but a cause for Sunni marginalization. Throughout these interviews high levels of sectarian cognition emerged around the belief that de-Ba’athification should undermine Sunni community power by creating a new dispensation that was reflective of Kurd and Shia demographic dominance. Sectarianism being practiced as a socio-political construct within which epistemologically designed ‘values’ of community assertion were potentially more vigorous than inter-community forms of transitional justice which would have upheld individual rights and democratic accountability. Adherents did not wish for a process of consent and norm building but wanted to subvert such concepts by advancing knowledge wrapped in tautological sectarian precepts. As stated;

‘They say we were only doing ‘what we are told’, but tomorrow they would seize power again. Pound the water and it will remain water. They lie that they are not responsible. Sunnis are Ba’athists. Some say they are not, but that is lies… Keep the pressure high and they will wilt. Ijtithath (uprooting) is a cause…If we do not maintain cause then the majority will fall under the power of the Sunnis who are not even majority of the people’ (Interview 2014).

Moreover, those leading the ‘uprooting’ were acting on behalf of the majority of the Iraqi people and that lustration adherents were required to not only speak on the behalf of victims of the previous regime but to ensure that the Ba’ath Party would not return. With regard to contrary evidence that the majority of respondents in national attitude surveys[[15]](#endnote-15) did not support the exclusive system there was dismissal of such evidence as contrived;

‘They will re-group, re-build and come again against the Iraqi people. We speak for the majority of the Iraqi people who wish to punish all Ba’ath and make it proper conditions that they can never come back. You say of this survey which shows Iraqis want better way for treating the Ba’ath. This type of thing you say is the work of Ba’ath and their international allies. No one but those punished wants the punishment to stop. We secure the people and they support us in campaign to remove the traces of Ba’ath from our public life’ (Shia politician 2014).

A common assertion was that the aim of lustration was to stimulate sectarian contestation, to engender friction and to perform authorized control over those excluded through coercive processes which purposefully promoted arbitrariness.

As explained;

‘You think this is a bad thing? This is like war. You need to not let the enemy understand what you are doing. We do not want a process that can be challenged. If we had a clear process they would know how to challenge it. It is like the ideas of we control through poor information. This is the only way to control these traitors and liars’ (Interview Dawa Party member 2011).

Lustration adherents perpetuated the idea of a treacherous group that had to be ‘fixed’ through state practices of punishment. This created a self-fulfilling sectarian proposition that the negative reaction to vetting was not based on the impact of retribution upon sectarian cognition but due to the flawed character of those rebuked who had failed to accept their punishment. It also aimed to create a social distance between the affected and those enacting legislative dominance. Such declarations pinpoint how de-Ba’athification became subjectively biased and thereby incapable of delivering a rational form of governance and regulatory competence. Evolving not as a site of solution-seeking between oppositional groups tied to a shared as opposed to vested interests or the formation of a process within which the principles of inclusive debate, equal treatment and freedom of speech could be invoked. Within sites of ethno-sectarian governance failure is not understood in terms of faulty design, institutional mismatch or adaptation faults but as the ‘proper’ exercise of power (Arato, 2009; Chandrasekaran, 2006; Migdal, 1988; Putzel, 2006; Richmond, 2010).

***Flawed Criteria: Experiencing Unfolding Power***

The authority of lustration processes was framed by multifarious processes and acts in which validity claims both embedded and entreated public employment exclusion with formal autonomy linked to coercion and legal opaqueness. In examining those who opposed lustration process and the multiple ways in which that opposition was voiced we observe a mixture of concerns regarding sectarian and violent contestation, incredulity regarding the lack of transparency and the voicing of potential remedies regarding the ignominy of De-Ba’athification. Interestingly, the criticism of de-Ba’athification included anti-Ba’athists Shias, Kurds and secularists who considered themselves as Iraqi nationalists.

*Picking up the Gun*

Although lustration in Iraq cannot be identified as the principle source of armed Sunni insurgency it was understood by interviewees as part of the multiple grievances that drove significant protesting and riots in Iraq in 2013 and 2014 influenced by militant Ba’ath groups such as Jaych Rijal al-Tariqa al-Naqshbandia and the New Ba’ath Party[[16]](#endnote-16). Both of whom articulated de-Ba’athification as a totem for Sunni resistance to the new regime. There were some who concluded that rupture caused by lustration had mobilizing and propaganda values for ISIS. A broader perspective viewed the partisanship of the SNCD/SNACJ as ensuring that any potential healing of the past was undermined by dismissals and counter-intuitive outcomes which emboldened resolve against the new regime;

‘The irony of SNCD in punishing people, mostly Sunnis, was meant that instead of removing Ba’athism and making it have no power they actually breathed life to it. The sign of Ba’athism remained as there was a power around it in being abused by the new regime. It was the one thing that people could look at and say ‘under the Ba’ath I was not treated like this, so why am I treated now like this? I will use violence, I will fight back. The sectarian power was released as the new leadership showed few morals in how they treated the defeated’ (Interview Sunni politician, 2014).

Moreover as concluded by a secular Shia politician;

‘The issue of guilt without unquestionable proof made de-Ba’athification bad law. By a short time many people had been excluded and some had taken to violence. With no livelihood they had simply decided to fight back. So the Accountability and Justice Act was an opportunity to show that transition based upon including those rejected by de-Ba’athification who had done nothing wrong could be addressed. But the bigots in power cared not about this. The incident of those excluded and the power of those not including them made the new law powerless in upward moves for good transitional justice (Interview 2014).’

*Asserting Power through the Opaque*

A common response to the workings of lustration by those negatively affected by it were their concerns regarding the opaque nature of what the aims and objectives of lustration were with regard to justice-delivery and also the somewhat peculiar ways in which it was implemented. For some the reason for their dismissal remained unknown. An interviewee (interviewee 2014), for example, noted that he was dismissed from his position in 2005, and had yet to receive any information against him. Non-Ba’ath Party members were also targeted, ‘via malicious rumors and false accusations linked to settling old scores’ (Interview 2008). In one case a Shi’ite tribal chief was dismissed by SNCAJ. After a successful appeal he was apologized to but then re-dismissed for having been ‘honored by Saddam Hussein several times’. Although, stressing that he had never met Saddam, despite his ability to do so, he was further and falsely charged with suppressing the Gulf War uprising in 1991.

It was also argued that the power of SNCD was enabled by it succeeding in its demand to become the main site for the location of information on Ba’ath Party membership and related human rights abuse and corruption. As explained by a human rights lawyer the lack of defined process influenced sectarian anxiety;

‘One cannot think of what you would imagine as a petitions process of even good criteria. There were no clear limits on the power of the SNCD and the impartiality of appeals was simply abused by the power-grabbers. The appeals criteria were unclear, with no autonomous appeals mechanism. I tried to locate evidence of any apparatus for outlining the underpinning and limitations. Everything was hidden and the skill to test decisions was just terrible. Yes, if the system had been fair people could have lived with abusers being taken out, but when the system was unfair then the whole idea of this being transitional justice became a feeling of transitional abuse and denial of rights. For me the SNCD was an internal state’ (Interview 2011)[[17]](#endnote-17).

There was near constant criticism of the process for employment restoration and access to pensions lacked proper selection criteria and procedures. Legal accountability being unwaveringly articulated and sensed as nominal and undermining by those experiencing de-Ba’athification who continually pointed to the failure to develop congruent and operative processes tied to defined standards. A common assertion being that when expelling and rejecting appeals the institutions of lustration asserted their validity to do so centred upon evidence they held on appellants[[18]](#endnote-18). Interviewees, even some of those initially supportive of de-Ba’athification, contended that this evidence was rarely presented for scrutiny. It was also claimed that SNCAJ does not hold verifiable records and had refused to provide an aspiration to do so. If records were to be used to adjudge past and potential behavior and are a used to determine if a person is to be re-admitted to employment then their accuracy is paramount. The capability to undertake appeals and to produce verified allegations against those removed or retired from posts was also questioned, by a Kurdish Human Rights lawyer, regarding the utilization of;

 ‘Disjointed, unproductive, and gratuitously contentious behavior. The SNCAJ did create what was supposed to be a self-governing cassation body that is true. But you miss the bit before that. The bit on the rights in law. So if there is evidence against me, that I was a high ranking Ba’athist, and they say that evidence is in my file then if the process assures fairness and rights then I should see the file. I should be told of the allegations against me and be allowed to offer evidence that challenges what is in the file. But what did the people get? Just a letter saying they were guilty. That means no due process’ (Interview 2014).

The power of the ‘evidence’ used was unquestionable but as for evidential accuracy questionable not only due to the secrecy or presentation but also other factors. Due to the scale of bombing during invasion and insurgency many records regarding party membership or human rights abuses were destroyed or lost. The Ba’ath Party operated in secrecy and via a cell structure which limited knowledge regarding the membership of others. As noted by a respondent expelled from a government ministry;

‘In my ministry they determined membership from informants. Some people lied to save themselves. They threw people out based on what they were paid or for how long you worked there. What did that prove? In my ministry I was thrown out because I was related to someone high up who was a Ba’athist. I was not high Ba’athist but they said I was as my relative was. They tried to get me to confess and tell on others. In the end I just took a pension and go, but was angry’ (Interview Civil servant 2014).

Other interviewees spoke of cases when pressure, such as threat of dismissal, was deployed to make staff name others, an approach that is questionable in terms of intimidation. As was noted in several interviews there was alarm around SNCAJ and SNCD possessing the capacity to dismiss, refuse pensions and also impugn an individual’s reputation despite a poor evidential base and inexact procedures. Such socio-economic and reputational capacity was used to stimulate fear of job loss and the silencing of opposition to that authority. Fear to resist, it was claimed, undermined introspection, internal review of procedures and appraisal of evidential accuracy.

Among those affected or concerned by De-Ba’athification there were countless examples of undefined and illegal forms of staff removal and a culture of humiliation and public shaming. Several spoke of simply finding a note on their desk announcing they were sacked, told face-to-face or via a phone call to leave with no mention of claims against them or citing of their party membership. Reinstatement did not necessarily lead to re-employment, back pay during dismissal or any process that was clear regarding re-employment. A lawyer from Baghdad noted that ‘there were cases when the people could not be permitted to give exculpatory evidence. Sometimes there was (sic) no permissions for physical participation. No common law provisions and a problem with the question – ‘what am I contesting?’ (Interview 2014).

In some cases re-instatement was agreed but returnees had to secure, under extemporized conditions, the presentation of references from non-Ba’ath Party members concerning an individual’s ‘trustworthiness’, ‘proof of regret’ or ‘evidence of superior reputation’. Attendance at rehabilitation events was generally dismissed as having no restorative purpose and according to an interviewee ‘it was just meetings about crimes of the Ba’ath and being told off. There was no process I could see about rehabilitation. Those taking these events had no training or legal skills’ (Interview journalist, 2009). In some cases character references were difficult to obtain with referees being concerned that composing letters of support for former Ba’ath Party members may bring them to the attention of de-Ba’athification adherents. Obtaining letters via corruption permitted ‘even those tarnished by their crimes getting their jobs returned to them’ (Interview, 2009). Restoration of employment veering between de jure process, examples of public humiliation, informality, obstruction and in some cases arbitrariness. Among those who were not or who were no longer adherents of de-Ba’athification practice was the notion of lustration as a coercive process of sectarian as well as political discourse building had a significant toll upon the capacity to build democracy. As a Shia secularists (2011) explained;

‘the new regime has members, powerful ones, who see de-Ba’athification as a way to attack the Sunni community. They do not really care if they are removing Ba’athists as they are wanted to rid the country of Sunnis. The process we has (sic) seen is one of harassing the Sunni. It is not about drawing a line and beginning a new Iraq... It is about destroying a people and claiming they are all something, they are all Saddamists. It is not true to think that but these people who expel and abuse others are matching Saddam by becoming a new, becoming a new type of Saddam… this is sectarian war playing’.

**Conclusion**

As indicated the force of law converged with other social forms, in this case the exclusion and rejection of Ba’ath Party members and others, in a manner that re-enforced the capacity of political actors to manage, reinforce and accomplish political marginalization. Exclusion from public sector employment was achieved by the coercive use of legal means which is ultimately, in this case, a rejection out of public space. That ejection was located within an opaque and powerful set of relational contexts with exclusion generally non-mediated so as to codify material and symbolic effects. As evidenced rejection of some and inclusion of others is both representational, emotional and contingent not only upon ejection but also the attempted silencing of marginalisation. Expulsion out of public sector employment was an act of state-building, developed around processes centred upon the discursive, legal and frictional control of state resources. The law-space nexus that emerged in Iraq exerted the regulatory power of the state to not only re-assemble state authority and activity but to set the parameters of socio-economic activity. A process that reminds us that the social order of war is intentionally inequitable and that the power of lustration is intrinsic to both conflict and the claiming of war centred legitimacy.

The agency of lustration is not merely the outcome of decisions but an ability to act and reproduce power. Without doubt lustration’s power, source and effect are obvious but the legitimacy of enacting law is highly contingent upon the performance of legal enactment. Lustration can be understood as part of the hegemony of invasion and post-invasion regulatory form through classification of of those ‘beyond’. Those ‘beyond’ were the target of the intention of invasion and the actors of regime changes through the legalization of “the monopoly of the legitimate use of physical and symbolic violence…’ (Bourdieu, 1990: 40).

Analysis discloses the inherent weakness of lustration in Iraq regarding construction, regulatory over-capacity, socio-symbolic interpretation, experiential meaning and the disjointed relations of power circulation. It functioned as a process through which global and then domestic agent’s subverted consensus, transparency and the legal and normative neutrality required for equitable public sector reproduction. This pinpoints how lustration systems, even those that are less harmful, cannot be interpreted as mere legal processes but as relations of power, situated context, interpretive meaning, consensus inhibition, purposeful distortion, rhetoric, the safeguarding of status and ultimately ejection from public space. Lustration in controlling public resources maintains the authority to do so, is habituated by the need to maintain such capacity and achieves legitimization ‘only by virtue of violence directed towards a space’ (Lefebvre, 1972: 322).

Bibliography

Al-Ali Z (2014) *The struggle for Iraq's future: how corruption, incompetence and sectarianism have undermined democracy*. Yale: Yale University Press.

Arato A (2009) *Constitution Making under Occupation: The Politics of Imposed Revolution in Iraq*. New York: Columbia University Press.

Bourdieu P (1990) *The Logic of Practice*. Stanford: Stanford University Press.

Bourdieu P, Wacquant L (1992) *An Invitation to Reflexive Sociology*. University of Chicago Press, Chicago.

Brinkerhoff D and Mayfield J (2005) Democratic governance in Iraq? Progress and peril in reforming state-society relations. *Public Administration and Development* 25(1): 59–73.

Chandrasekaran R (2006) *Imperial Life in the Emerald City: Inside Iraq’s Green Zone*’. New York: Vintage Books.

Chiu Y (2011) Liberal Lustration. *Journal of Political Philosophy* 19(4): 440-464.

Coalition Provisional Authority (2003) Delegation of Authority Under De-Baathification Order No 1. Available at: [https://en.wikisource.org/wiki/Mem\_7:\_Delegation\_of\_Authority\_Under\_De-Baathification\_Order\_No\_1](https://en.wikisource.org/wiki/Mem_7%3A_Delegation_of_Authority_Under_De-Baathification_Order_No_1) (accessed 1 January 2017).

Comaroff JL and Comaroff J (2006). Law and Disorder in the Postcolony: An Introduction In: Comaroff J and Comaroff JL (eds) Law *and disorder in the postcolony*. Chicago: University of Chicago Press, pp 1-56.

Daly E (2014) Transitional Justice in Iraq: Learning the Hard Way. *Israel Law Review* 47 (1): 63-83.

D’Arcus B (2014) Extraordinary rendition, law and the spatial architecture of rights. *ACME: An International E-Journal for Critical Geographies* 13(1): 79–99.

David R (2006) From Prague to Baghdad: Lustration Systems and their Political Effects. *Government and Opposition* 41(3) (2006): 347–372.

David R and Choi S (2006) Forgiveness and transitional justice in the Czech Republic. *Journal of Conflict Resolution* 50: 339-67.

Dawisha A (2009) *Iraq: A Political History from Independence to Occupation.* Princeton: University Press.

Democratic Principles Working Group (2002) Final Report on The Transition to Democracy in Iraq <http://www.wadinet.de/news/dokus/transition_to_democracy.pdf> (accessed 10 November 19)

Derrida J (1992) Force of Law: The “Mystical Foundation of Authority”. Translated by Mary Quantance. In: Cornell D, Rosenfeld M and Carlson DG (eds) *Deconstruction and the Possibility of Justice* New York and London: Routledge.

Dodge T (2013) *Iraq - From War to a New Authoritarianism*. London: Routledge.

Foote C, Block W, Crane K et al (2004) Economic Policy and Prospects in Iraq. *The Journal of Economic Perspectives* 18(3): 47-70.

Gready P and Robins S (2014) From Transitional to Transformative Justice: A New Agenda for Practice. *International Journal of Transitional Justice* 8 (3): 339-361.

Gregory D (2008) The biopolitics of Baghdad: Counterinsurgency and the counter-city. *Human Geography* 1(1): 6-27.

Gregory D (2011) The everywhere war. *The Geographical Journal* 177(3): 238–250.

Haddad F (2011) *Sectarianism in Iraq: Antagonistic visions of unity.* London: Hurst.

Hatch R (2005) A Year of De-Baathification in Post-Conflict Iraq: Time for Mid-Course Corrections and a Long-Term Strategy. *Journal of Human Rights*, 4(1): 103-112.

Horne C (2014) The Impact of Lustration on Democratization in Postcommunist Countries. *International Journal of Transitional Justice* 8(3): 496-521.

Ismael T and Fuller M (2008) The disintegration of Iraq: the manufacturing and politicization of sectarianism. [*International Journal of Contemporary Iraqi Studies*](http://www.ingentaconnect.com/content/intellect/ijcis;jsessionid=b1shgn7q36lgk.x-ic-live-03), 2(3):  443-473.

Jones C (2016) Lawfare and the juridification of late modern war. *Progress in Human Geography* 40(2): 221–239.

Kaminski M and Nalepa M (2006) Judging transitional justice: A new criterion for evaluating truth revelation procedures. *Journal of Conflict Resolution.* 50(3): 383-408.

Katzman K (2009) Iraq: Post-Saddam Governance and Security. CRS Report RL31339. Available at: https://fas.org/sgp/crs/mideast/RL31339.pdf (accessed 1 January 2017).

Kedar A (2014) Expanding legal geographies: A call for a critical comparative approach. In: Braverman I, Blomley N and Delaney D (eds) *The Expanding Spaces of Law: A Timely Legal Geography*. Stanford, CA: Stanford Law Books, pp.95–119.

Kennedy D (2006) *Of War and Law*. Princeton, NJ: Princeton University Press.

Kittrie OF (2010) Lawfare and U.S. National Security. *Case Western Reserve Journal of International Law* 43 (1/2): 393-421.

Klein N (2007) America's Deadly Shock Doctrine in Iraq. Available at: [http://www.alternet.org/story/62525/america's\_deadly\_shock\_doctrine\_in\_iraq](http://www.alternet.org/story/62525/america%27s_deadly_shock_doctrine_in_iraq) (accessed 1 January 2017). (Excerpt from Klein N (2007) *The Shock Doctrine: The Rise of Disaster Capitalism*. New York: Henry Holt.)

Köse T, Özcan M and Karakoç E (2016) A Comparative Analysis of Soft Power in the MENA Region: The Impact of Ethnic, Sectarian, and Religious Identity on Soft Power in Iraq and Egypt Foreign Policy Analysis. *Foreign Policy Analysis,* 12(3): 354–373.

Lefebvre H (1972) *Le Droit à La Ville Suivi de Espace et Politique.* Paris: Antropos.

Luban D (2010) Carl Schmitt and the Critique of Lawfare. *Case Western Reserve Journal of International Law* 43 (1/2): 457-471.

Malamud-Goti J (1990) ‘Transitional Governments in the Breach: Why punish state criminals?’ *Human Rights Quarterly* 12 (1): 1-16.

Migdal J (1988) *Strong societies and weak states: state-society relations and state capabilities in the Third World*. Princeton: Princeton University Press.

Morrissey J (2011) Architects of Empire: The Military–Strategic Studies Complex and the Scripting of US National Security. *Antipode*, 43(2): 435–470.

Prakash A and Potoski M (2016) Dysfunctional institutions? Toward a New Agenda in Governance Studies. *Regulation & Governance* 10(2): 115–125.

Putzel J (2006) Cracks in the US Empire: Unilateralism, the ‘War on Terror’ and the Developing World. *Journal of International Development* 18(1): 69-85.

Richmond O (2010) Resistance and the Post-Liberal Peace. *Millennium: Journal of International Studies* 38(3): 665–692.

Sarat A and Kearns TR (eds) (1995) *Law’s Violence*. Ann Arbor: University of Michigan Press.

Sibley D (1995) *Geographies of Exclusion: Society and Difference in the West.* London: Routledge.

Sissons M and Al-Saiedi A (2013) A Bitter Legacy: Lessons of De-Baathification in Iraq. Available at: https://www.ictj.org/sites/default/files/ICTJ-Report-Iraq-De-Baathification-2013-ENG.pdf (accessed 1 January 2017).

Stover E, Megally H and Mufti H (2005) Bremer’s “Gordian knot”: Transitional Justice and the US Occupation of Iraq’. *Human Rights Quarterly* 27(3): 830–857.

Stover E, Sissons M, Phuong P et al (2008) Justice on Hold: Accountability and Social reconstruction in Iraq. *International Review of the Red Cross* 90(869): 5-28.

Tiefenbrun SW (2010) Semiotic Definition of “Lawfare". *Case Western Reserve Journal of International Law* 43 (1/2): 29-60.

Visser R (2007) Ethnicity, Federalism and the idea of sectarian citizenship in Iraq: A Critique. *International Review of the Red Cross* 89(868): 809-822.

Wehrey F (2014) *Sectarian Politics in the Gulf: From the Iraq War to the Arab Uprisings*. Columbia: Columbia University Press.

Werner W. (2010) The Curious Career Of Lawfare *Case Western Reserve Journal of International Law* 43 (1/2): 61-72.

Notes

1. The work of David is highly instructive when analyzing lustration due to his typology of type and also his understanding that purification is symbolically constructed and creates agency and social construction. [↑](#endnote-ref-1)
2. We challenge the reading that exogenous actors achieved the installation of a neo-liberal state and that they failed to engage local actors in post-invasion decision making as argued by Klein & Holt (2007). In fact public sector employment grew post-invasion and lustration was administered by endogenous actors who, far from a position of passivity, subverted due process mechanism and expanded the push against international and national legal norms and duties. We do agree that neo-liberal capacities were located elsewhere in terms of private capital and state asset stripping. [↑](#endnote-ref-2)
3. For a description of the link between lustration and sectarianism see Ben Emmerson The Guardian http://www.theguardian.com/commentisfree/2013/mar/07/reconciliation-iraq-impossible-us-truth-dirty-war [↑](#endnote-ref-3)
4. Following the overthrow of the Baʿath government in 2003, the [United States](https://www.britannica.com/place/United-States) and its coalition allies established the [Coalition Provisional Authority](https://www.britannica.com/topic/Coalition-Provisional-Authority) (CPA). In July the CPA appointed the 25-member [Iraqi Governing Council](https://www.britannica.com/topic/Iraqi-Governing-Council), which assumed limited governing functions. IGC was the provisional government of [Iraq](https://en.wikipedia.org/wiki/Iraq) from July 13, 2003 to June 1, 2004. The IGC consisted of various Iraqi political and tribal leaders who were appointed by the CPA to provide advice and leadership of the country until the June 2004 transfer of sovereignty to the [Iraqi Interim Government](https://en.wikipedia.org/wiki/Iraqi_Interim_Government) (which was replaced in May 2005 by the [Iraqi Transitional Government](https://en.wikipedia.org/wiki/Iraqi_Transitional_Government), which was then replaced the following year by the first permanent government. The IGC, was unlike the DPWG, drawn from vehement opponents of the Ba’ath regime and were particularly supportive of neo-liberal economics. [↑](#endnote-ref-4)
5. The DPWG included the Iraqi National Front, the Iraqi National Accord, Patriotic Union of Kurdistan, Kurdistan Democratic Party, Constitutional Monarchy Movement, Iraq Turkoman Front, Iraqi National Movement, Alliance of Iraqi Tribes, Iraqi Forum for Democracy, Iraqi National Coalition, Representatives of the Assyrian Community, and the Iraqi National Congress. It’s membership were opponents of the Ba’athist regime. The participants analysed the specifics of democratic principles in a post-Saddam Hussein Iraq, and how best to prepare for Iraq's evolution towards democracy. [↑](#endnote-ref-5)
6. Council on Foreign Relations ‘ Iraq: Debaathification’ <http://www.cfr.org/iraq/iraq-debaathification/p7853> (Accessed 6 April 2016) [↑](#endnote-ref-6)
7. For an argument that Shias who were in the Ba’ath Party were less likely than Sunnis to be punished see <http://foreignpolicy.com/2008/01/16/seven-questions-the-de-bremerification-of-iraq/> (Accessed 3 April 2016) [↑](#endnote-ref-7)
8. Contrary to the International Covenant on Civil and Political Rights position regarding collective guilt. See <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (Accessed 3 April 2016). [↑](#endnote-ref-8)
9. A key issue in Iraq was that the capacity to deal with victimhood and related issues was undermined by a lack of political agreement, families recovering bodies from sites of war crimes and a general failure to create agreed investigations, forensic analysis and truth commissions. [↑](#endnote-ref-9)
10. Order 1 is available at <http://www.cfr.org/iraq/iraq-coalition-provisional-authority-order-number-one-de-baathification-iraqi-society/p30235> (Accessed 1 April 2016). [↑](#endnote-ref-10)
11. Copy held by author. [↑](#endnote-ref-11)
12. Copy held by author. [↑](#endnote-ref-12)
13. It was alleged by several interviewees that the majority of those permitted to return were Shi’ites. [↑](#endnote-ref-13)
14. See <https://search.wikileaks.org/gifiles/?q=de-baathification&mfrom=&mto=&title=&notitle=&date=&nofrom=&noto=&count=50&sort=0&file=&docid=&relid=0> [↑](#endnote-ref-14)
15. The main choice in attitudinal surveys regarding de-baathification is for limited forms of lustration see for example <https://www.globalpolicy.org/images/pdfs/09bbciraqipoll.pdf> and <http://www.iri.org/resource/iri-releases-survey-iraqi-public-opinion-2>. [↑](#endnote-ref-15)
16. The power of the error prone approach reflected in the rise of the Jaych Rijal al-Tariqa al-Naqshbandia militia which used Sunni and Ba’athist experiences of lustration to ferment dissent. A group, who despite their secularism aided the rise of ISIS in Iraq, notably in the seizure of Mosul in 2014. In response and in an attempt to gain Sunni support and to defeat ISIS the Governate of Salahuddin removed lustration based exclusions so as to return the vetted to local security forces. [↑](#endnote-ref-16)
17. That internal state operated by undermining the appeal rules outlined in Order 1 namely that; Any Iraqi citizen who is dismissed from his or her position of employment as a result of the exercise of the authority conferred herein shall be entitled to: a) advance written notification explaining the grounds for dismissal and the procedures for appealing that dismissal; b) a reasonable opportunity to respond to the notification in writing or in person and present evidence; c) a reasonable opportunity to appeal immediately any adverse decision, in writing or in person, to a fair and impartial entity independent of the individual or organization that rendered the adverse decision, which shall promptly render a written decision in the case (Coalition Provisional Authority 2003 p.1). [↑](#endnote-ref-17)
18. Coalition Provisional Authority (2003) Order 1 also included the following processes 1) In any case in which a dismissed employee’s appeal is denied, the dismissed employee shall have the right to request further review of the matter by the Higher National De-Baathification Commission or a national committee established by the Higher National De-Baathification Commission for this purpose 2) If an appeal results in an employee’s reinstatement, the employee shall be paid back pay from the date of dismissal to the date of reinstatement 3) Following consultation with the Governing Council, the Administrator may reinstate an employee if he concludes that it is in the interests of the Iraqi people or that failing to reinstate the employee would be fundamentally unfair 4) The Governing Council shall coordinate with the Minister of Finance before exercising the authority conferred under this Memorandum in a manner that will significantly affect the national budget In Iraq lustration was a system was presented as transgressor removal which masked the desire to develop neo-liberal practice, undermine Arab nationalism, remove those opposed to federalism and undermine secular values. An unquestioned example of laws expanding role in the spaces of war (Sarat and Kearns, 1995) in which lustration, was not, in the case of Iraq ‘… an impartial arbiter of conflict’ but ‘…an instrument of power’ that perpetuated the conflict via other means (Jones, 2016: 224). Therefore, lustration evolves through … use’ of ‘different social practices…’ that ‘… suppress different ways of organising legal, moral, and political responsibility’ (Werner, 2010: 61).

We do not question the removal of transgressors within the Ba’ath regime but instead acknowledge that lustration policies included acts that denied economic well-being, the security of economic activity and denial of full-citizenship to those who were guiltless or whose guilt was unproven. How actors constructed the classification of those who were deemed as peripheral to the new political order is not only allied to an understanding of symbolic violence but is key to interpreting the performativity of doing so and the processes through which ‘… men and women … simply fall short, in the eyes of their judges, of the right way of being and doing (Bourdieu 1990 p. 231). In examining the process through which the concentration of state power was achieved we analyse the exchange of power from exogenous to endogenous control, fraud, variant law making and sectarianized political agency. Understanding those relationships requires measurement of state practice as a site of contestation and friction. We here focus upon lustration as a form of resource allocation centred governance by examining actor-related behaviour as concerns the administration of lustration and the process through which exogenous actors in advancing lustration, as contingent to regime transfer, aided the authority of an ethno-sectarian and political party mission led by endogenous actors (Köse, Ozcan & Karakoç 2016). That mission undermined broader notions of citizenship in favour of a form of governance that aimed to achieve a regulatory fit that was to be achieved by illegally banning the free press and electoral candidates, skewing resources to ensure political patronage and ‘purifying’ the spaces of public sector employment (Haddad 2011; Katzman 2009; Al-Ali 2014; Ismael & Fuller, 2009). The robust nature of that exclusion and control was emblematic of interventionist state power delivered by a state that was weak. In such circumstances the state achieves authority through the sites in which control is achievable. Sectarianised governance, for example, became one of the pivots upon which state regulation turned (Migdal 1988; Prakash & Potoski 2016). Laws of lustration providing the signifier of and for the constitutive practices required to control empowerment (new elite) and disempowerment (generally old elite) processes.

The capacity therefore for new modes of democratic governance that would have disavowed ethno-sectarian state-based regulation was undermined by the imposition of a Western ‘fix’ bereft of an adequate understanding of Iraq’s complex, ethnic, sectarian and tribal loyalties and their manipulation. We support the proposition, led by scholars and others, that exogenous-led intervention was inappropriate for Iraq and agree that the outcome of the Western tendency to endorse regime change via elite imposition is a repeated folly (Brinkerhoff & Mayfield 2005). As noted by Fakhoury (2014) Western policies of regime change intensified the politics of political entrepreneurs by providing ‘the main vector through which they entrench their predominance’ (2014, p. 134).

 of Iraq. [↑](#endnote-ref-18)