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Introduction

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Introduction

DAVID GLAZIER*

Like a flock of eagles on their wounded prey
The furies have descended on Iraq . . .¹

When the United States chose to plunge Iraq back into war in March 2003, the conflict was all about us. *We* were threatened by Iraq's presumed possession of weapons of mass destruction. *We* were threatened by Iraq's alleged support of terrorists. *We* were threatened by the Iraqi leadership's "deep hatred of America."² We had done "nothing to deserve or invite this threat," our President assured us, but we had the right, and he had the obligation, to use force to ensure that "this danger [would] be removed."³

To be fair, President Bush and other U.S. leaders consistently sought to portray our disagreement as being with Saddam Hussein and not the Iraqi people. Indeed, the president endeavored to convey this message directly to the Iraqi populace via translated radio broadcasts beamed into the country before the invasion:

If we must begin a military campaign, it will be directed against the lawless men who rule your country and not against you. As our coalition takes away their power, we will deliver the food and medicine you need. We will tear down the apparatus of terror and we will help you to build a new Iraq that is prosperous and free. In a free Iraq, there will be no more wars of aggression against your neighbors, no more poison factories, no more executions of dissidents, no more torture chambers

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1. Adil Abdullah, *The Prey*, in *FLOWERS OF FLAME: UNHEARD VOICES OF IRAQ 3* (Sadek Mohammed et al. eds., 2008).

2. President George W. Bush, President of the United States, President Says Saddam Hussein Must Leave Iraq Within 48 Hours, Remarks by the President in Address to the Nation (Mar. 17, 2003), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2003/03/20030317-7.html>.

3. *Id.*

and rape rooms. The tyrant will soon be gone. The day of your liberation is near.⁴

But the unfortunate reality of the subsequent invasion and the years of turmoil that followed is that it has been the Iraqi people who have largely borne the costs of our elective war. While the mass media periodically reminds us of the conflict's costs in terms of U.S. taxpayer dollars and U.S. military lives lost, few of us have any real appreciation of the conflict's impact on the Iraqi people, perhaps in large part due to our government's refusal to even compile such information.

What we do know, however, is that while President Bush determined to overthrow Saddam Hussein, Secretary of Defense Donald Rumsfeld directed it be done in a way that would vindicate his vision of a transformed American military, relying on technology and massed firepower ("shock and awe") rather than large numbers of ground soldiers. The one senior officer who dared to voice concern that the planned invasion force was inadequate to maintain post-conflict stability, General Eric Shinseki, was publicly rebuked and subjected to the indignation of having a successor named more than a year before the end of his formal term as Army Chief of Staff.⁵ Although the State Department had lead an extensive program to plan for the post-war phase, known as the Future of Iraq project, Rumsfeld and his key subordinates such as Paul Wolfowitz and Douglas Feith, insisted on excluding those involved with the project from any meaningful roles as the invasion actually went forward.⁶

While the U.S. military quite successfully executed the initial combat phase of the invasion, racing to Baghdad and defeating those Iraqi forces that remained in the field to oppose them, it failed miserably at the execution of the initial post-conflict phase. The obligations of a military force that displaces existing civil authority are laid out in a subset of the overall law of war known as the law of belligerent occupation. The United States played the leading role in the development of this body of law and has extensive documented experience in its execution, most recently in Germany and Japan following World War II. Whether from ignorance or by design, however, U.S. forces were unprepared and

4. *Id.*

5. LARRY DIAMOND, *SQUANDERED VICTORY* 284-85 (2005).

6. *Id.* at 27-30.

unable to execute their responsibilities under this body of law, including particularly the requirement to maintain order and protect civil infrastructure in the days after the invasion. The resulting chaos saw the looting of every key Iraqi government facility save the oil ministry and contributed to the rise of the insurgency, which ultimately imposed tremendous costs on Iraqi society.⁷

Estimates of Iraqi civilian casualties since the U.S. invasion vary widely, but recently released Iraqi government figures coupled with hospital and media reports place the toll as being at least one hundred and ten thousand.⁸ To put this in perspective, on a per capita basis, the Iraqi people have been subjected to the equivalent of more than three hundred ninety 9/11s, or one roughly every six days for six years! As astonishing as this figure is, it only reflects part of the war's impact which also includes massive internal disruptions, including the displacement of approximately 1.8 million Iraqis from their homes during the period since the U.S. invasion and the flight of many others to neighboring countries.⁹

Despite this human toll, almost all of the focus in the United States has been on our concerns—how long should we stay, how many American casualties are too many, etc. Harvard Law School Professor Noah Feldman's book, *What We Owe Iraq*,¹⁰ is a rare exception and helped inspire faculty and students at Loyola Law School Los Angeles to seek to explore this more fully in a daylong symposium. Entitled "Transformation in Iraq: From Ending a Modern War to Creating a Modern Peace," it was held on the law school's campus on April 4, 2008.¹¹ We are pleased to be able to present a set of papers resulting from that event in this special symposium issue.

7. See David Glazier, *Ignorance is Not Bliss: The Law of Belligerent Occupation and the U.S. Invasion of Iraq*, 58 RUTGERS L. REV. 121, 185-187 (2005).

8. See Kim Gamel, *Secret Tally Has 87,215 Iraqis Dead*, ASSOCIATED PRESS, Apr. 24, 2009, available at http://news.yahoo.com/s/ap/20090424/ap_on_re_mi_ea/ml_iraq_death_toll.

9. See, e.g., Internal Displacement Monitoring Centre, Iraq, Dec. 29, 2008 at [http://www.internal-displacement.org/8025708F004CE90B/\(httpCountries\)/718916EEB6743EEF802570A7004CB9B9?OpenDocument](http://www.internal-displacement.org/8025708F004CE90B/(httpCountries)/718916EEB6743EEF802570A7004CB9B9?OpenDocument).

10. See generally NOAH FELDMAN, *WHAT WE OWE IRAQ: WAR AND ETHICS OF NATION BUILDING* (2008).

11. Audio recordings of each of the three panels and the luncheon speech by Prof. Feldman are available at <http://ilr.ils.edu/2008Symposium.htm>.

First, Professor Jeff McMahan of Rutgers University's Department of Philosophy identifies a surprising gap in moral scholarship, noting that while there is an extensive literature addressing the resort to, and conduct of, war per se, there has been no serious effort to study the morality of post-conflict military occupation. Professor McMahan ably endeavors to launch "an overdue discussion in analytic moral philosophy" by offering his thoughts on this important question.

Professor Jeremy Waldron of New York University builds upon that effort, discussing the widely accepted concepts of *jus ad bellum*, or law regulating the resort to hostilities, and *jus in bello*, or law regulating the conduct of hostilities. Professor Waldron proposes that corresponding focus needs to be placed on *jus post bellum*, which he defines as "a body of law that is supposed to regulate occupation, reparations, the dismantling of aggressive regimes, the re-formation of belligerent nations [and] treaties of peace"

Seton Hall Law School Professor Kristin E. Boon then provides a logical follow-on to Professor Waldron's work, considering in more detail what the contours of a viable modern *jus post bellum* should be. Professor Boon's contribution is particularly timely, noting the need to expand traditional occupation law to address outside participation in post-internal conflict situations and addressing such emerging concepts as the "Responsibility to Protect."

Professor Ralph Wilde of the University College London Faculty of Laws considers what the scope of occupation authority should be, discussing the validity of efforts to transform occupied territories given the 1907 Hague Land Warfare Regulations emphasis on status quo maintenance. Professor Wilde considers the role of International Human Rights Law in modern occupations, and draws lessons from the evolution of international views on developed nations administering less advanced territories in paternalistic trusteeships.

Our final paper is a lightly edited transcription of Professor Noah Feldman's remarkable lunch speech, delivered without any prepared text, but impressively ranging from philosophical considerations to more concrete aspects of the U.S. experience in Iraq. Professor Feldman concludes that what we owe the Iraqi people is to "leave Iraq in a state wherein Iraqis are capable of effective self-government."

In a poem titled simply “Iraq,” an Iraqi poet describes the situation confronting his country thusly:

Iraq that is going away
With every step its exiles take. . . .
Iraq that shivers
Whenever a shadow passes.
I see a gun’s muzzle before me,
Or an abyss.
Iraq that we miss:
Half of its history, songs and perfume
And the other half is tyrants.¹²

To rephrase Professor Feldman’s views, perhaps we can all agree that what we owe the people of Iraq, after all they have been through, is a realistic chance of realizing the days of “song and perfume” once again.

12. Adnan Al-Sayegh, *Iraq*, in *FLOWERS OF FLAME*, *supra* note 1 at 78.

