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# Institutionalizing Exclusion: De-Ba'athification in post-2003 Iraq

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The American invasion and subsequent occupation of Iraq in 2003 was accompanied by an almost entire institutional reconfiguration of the state. After regime change toppled the Ba'athist autocracy, the occupation was characterized by failed statebuilding resulting in elite fractionalization, ethnic exclusion, and socio-economic and political decline.<sup>1</sup> This article examines institutional failures that impeded democratic consolidation in post-2003 Iraq. I argue that the Coalition Provisional Authority (CPA) cemented patterns of exclusion and ethnic dominance through the creation of the de-Baathification Commission immediately following the invasion.

The Commission's pervasive purging of former Ba'athists signaled to the Sunni-Arab community that their status had been relegated to that of a *persona non grata* (see Haddad in this collection), which crystalized the community's intransigence toward accepting the new political order. As a result, the absence of parallel, cross-communal peacebuilding initiatives intensified interethnic distrust of the statebuilding process, which exacerbated communal fractionalization and exclusion<sup>2</sup> at the onset of the transition. Far from being an instrument of transitional justice, de-Ba'athification became a jurisdictional tool for institutionalizing discrimination by previously excluded Shia and Kurdish elites who captured the political playing field post-2003. As a discriminatory institution<sup>3</sup> advocated largely by Shia elites in exile and Kurdish elites in the Kurdistan Region of Iraq (KRI), it intensified segmental cleavages and markedly altered the country's democratic transition.

Building on Wimmer's analysis of power configurations and conflict, I posit that de-Baathification and communal exclusion during the critical transitional phase of statebuilding impeded building sustainable

peace and heightened conflict by excluding segments of the population from the exchange networks that bind a state to its society; such exclusion violated the principles of political legitimacy which the purported statebuilding effort was conceived upon and exacerbated the mobilization and determination of excluded groups to resist the new order; and, lastly, this drastic change in the institutional setup created a struggle "over who has the right to rule."<sup>4</sup>

## Formulating lustration in post-Ba'athist Iraq

The American statebuilding schema for Iraq, including the transitional phase of the occupation, the establishment of the CPA, and the Green Zone in Baghdad (the American Zone in Germany), mirrored the post-war planning and reconstruction of Germany under the US Group Control Council for Germany (US Group CC).<sup>5</sup> It thus was no surprise that de-Nazification became the blueprint for addressing questions relating to the disintegration and demobilization of members of the *ancien régime*. Modelled after de-Nazification and the communist purges following Soviet collapse in Eastern Europe, de-Ba'athification, in principle, was purposive of eliminating the upper echelons of various Ba'athist entities.<sup>6</sup> However, unlike de-Ba'athification, de-Nazification was ratified under the Potsdam Agreement signed by Allies of WWII, Britain, the US, and the Soviet Union, and was subsequently revised by German policymakers to serve as an instrument of rehabilitation rather than retribution.<sup>7</sup> Moreover, once de-Nazification was handed over to vetted federal and local authorities under the Law of the Liberation from National Socialism and Militarism of 1946, its framework and structure was reformulated to facilitate its institutionalization into various governing institutions rather than one supra-national body to promote more localized oversight regarding its application. Doing so depoliticized its

scope and mandate, enabled accountability at various institutional levels of governance, and made it part and parcel of Germany's post-war democratization process.<sup>8</sup> While it was quickly determined that lustration in Germany must be reformed to serve as an instrument of reintegration with an emphasis on promoting reintegration and transitional justice at the federal, state, and local levels of German society, de-Ba'thification, on the other hand, continues to operate as an unaccountable supra-national body with limited independent judicial oversight, which has enabled its politicization as an instrument of exclusion. The failure of lustration in Iraq under de-Ba'thification is an outcome of two interlinked processes. First, the absence of rule of law and judicial autonomy made it susceptible to elite capture. Second, ingrained patronage empowered political parties and facilitated its overreach, which obstructed legislative and judicial autonomy from the executive branch controlled by powerful communal party blocks.

### **Institutionalizing exclusion: Framing de-Ba'thification and its perils**

Conceptualizing the impact of de-Ba'thification on state development requires an evaluation of the constitutive elements of its elite core-rank and file members of the Ba'th regime targeted by de-Ba'thification. The encapsulation of the state by the Ba'th regime and its diffusion in society institutionalized mandatory state-wide party membership to co-opt and subvert dissidence and maintain control. Although Sunni-Arabs were demographically a minority, membership tended to be higher in Sunni-majority areas,<sup>9</sup> they were disproportionately represented in the Party's clientelistic designations and occupied both rank and file and lower echelons of the Party.<sup>10</sup> As succinctly noted by Blaydes, "higher-order benefits associated with the Ba'th Party disproportionately went to individuals who came from

the geographic regions closest to Tikrit, as they served as the regime's loyal core."<sup>11</sup> Their targeted exclusion from governing the state through de-Ba'thification impelled their alliance of convenience with radical Islamist groups and shaped the insurgency that engulfed the country post-2003.<sup>12</sup>

The CPA, as the administrative and civilian arm of the occupation under Paul Bremer, issued two critical orders within two months of the occupation in 2003. Order No.1 mandated the dissolution of the Iraqi Ba'th Party while Order No. 2 dissolved all party structures, financial institutions, leaders and leadership positions, Iraqi technocrats, and political, security, and intelligence institutions.<sup>13</sup> Although precise figures are difficult to ascertain, this resulted in the purging of an estimated 20-120,000 Iraqis, including doctors, teachers, and other technocrats.<sup>14</sup> The disbanding of the army left an estimated 500,000 Iraqi soldiers armed, unemployed, and without pension pay until a vetting process was put in place a few months later that reinstated selective pension payouts.<sup>15</sup> Although the Iraqi federal police under the auspices of the Ministry of the Interior was spared from Order No. 2, rampant corruption, looting, and the failure to devise a plan to integrate the force prior to its disbursement severely hampered post-invasion security efforts.<sup>16</sup>

The sweeping nature of de-Ba'thification also caused a fissure between the civilian arm of the occupation and the American military, including CENTCOM, the Combined Joint Task Force for Iraq (CJTF-7) and the Coalition Forces Land Component Command (CFLCC), given that the latter planned to retain the Iraqi army to aid with security and reconstruction immediately after the invasion.<sup>17</sup> This was echoed by General David Petraeus, the Commander of the Multi-National Force in Iraq, in an interview with the author noting that "these two orders essentially cut our legs from underneath us."<sup>18</sup>

Similarly, John Nixon, the first CIA officer to interrogate Saddam Hussein upon his capture in December 2003, noted that:

We went from a period where Sunnis were helpful to where they were hostile, even with no Shia insurgency, there was an emerging Sunni insurgency, and certainly the de-Baathification order is very much a market point a watershed moment to when the hostility begins to grow... The return of these emigres who had political agendas to advance and realization that everything was up for grabs and that the Sunnis were almost completely being shut out of this. This perception was mild in the beginning but grew more so and one of the key perceptions that helps erupt the sectarian violence in 2004 onward.<sup>19</sup>

The effects of de-Ba'athification on Iraqi's Sunni Arabs reverberated throughout the formative months and years following the occupation. By 2006, over 450 teachers, 17 Tikriti university professors, 86 healthcare professionals, 4 judges, 330 police officers, and hundreds of local technocrats were out of work in Salahdin province with its capital Tikrit, Saddam Hussein's tribal base. The impact of this on local grievances was reflected in an American diplomatic cable by Ambassador Zalmay Khalilzad in December 2006:

In the Baathist heartland of Salah ad Din (SaD), the effects of de-Baathification and dismantling of the former Iraqi Army are causing SaD Sunnis to resist engagement in the political process...over 1,300 former Baathist professionals, all of whom are Group members (Firqas) or below, believe they have properly completed applications for exceptions, but have reportedly not received notice of action on their cases from the HNDC. Many more government retirees and former IA officers have been disallowed from receiving their pensions. SaD Sunnis have largely accepted that de-Baathification will remain in place, but they do want to see the regulations relaxed,

a HNDC that functions efficiently when reviewing files, and Sunni representation on the HNDC (by which they mean a Sunni who was in the country during Saddam's regime)...we fear that if the changes to the de-Baathification regulations do not allow the SaD Sunnis to return to work and to participate in government, then we will see those individuals become more supportive of insurgent elements.<sup>20</sup>

Similarly, Yonadam Kanna, an Assyrian member of the Iraqi parliament and a member of the first National de-Ba'athification Commission, reiterated the politicization of Commission by Shia and Kurdish members who, more often than not, targeted individuals on the basis of communal affiliation which contributed to the shortage of Iraqi technocrats in key sectors of the state.<sup>21</sup>

### **Constraining peacebuilding: de-Ba'athification and its outcomes**

De-Ba'athification adversely affected the implementation of national reconciliation initiatives. By 2007, reforming the de-Ba'athification Commission to redirect punitive measures toward only high-ranking officials while allowing lower level members (the overwhelming majority) who had not committed crimes to return to their jobs and receive pensions, had become the single most important legislative issue for national reconciliation.<sup>22</sup> With vast powers anchored in patronage and little to no independent oversight over its mandate and application, the Commission wielded great power over the targeting and exclusion of large segments of Iraqis and subverted the application of transitional justice mechanisms during the formative years of the post-Ba'athist transition.<sup>23</sup> For American administrators, the politicization of the Commission was an outcome of two processes. First, according to Paul Bremer III, the absence of Iraqi technocrats made it more difficult for the UN and the CPA to form a technocratic government, which enabled the reliance on ethnic elites to form government. Second, Shia and Kurdish insistence on

dominating the statebuilding process coupled with the intransigence of Sunni Arabs to accept the post-2003 order led to its manipulation by Shia and Kurdish elites. For his part, Bremer acknowledged that “I certainly made a mistake in how I allowed Iraqi politicians to be responsible for the implementation of de-Ba’thification. It might be that if we had done that better, it would have helped certainly at the margins I’m not sure it would have made a major difference in where things stand today.”<sup>24</sup>

Conflicts with governments that obstruct peacebuilding occur under three interlinked circumstances: first, if representatives of ethnic groups are excluded from state power, particularly if that group experienced a recent loss of power; second, if aggrieved groups have high mobilizational capacity; and third, if they have experienced conflict in the past.<sup>25</sup> Various institutional choices, including the muhassasa system, asymmetrical power-sharing, and weak rule of law, during the transitional and subsequent statebuilding phase of the occupation gravely hindered attempts at political, economic, and cultural rebuilding.<sup>26</sup> One way the CPA obstructed reconciliation and peacebuilding was through the creation of a mechanism that institutionalized the exclusion of particular segments of the population, which produced a crisis of governance and a conflict of legitimacy. Exclusion impedes peacebuilding because it

fosters conditions conducive to the eruption of conflict stemming from “inequality in the distribution of and access to political opportunity and power among groups, including access to the executive branch and the police and military.”<sup>27</sup> The enduring effects of de-Ba’thification on state fractionalization is best evinced by the alliance of former Ba’thists with radical Islamist groups in the creation of ISIL and its takeover in 2014 (see Dodge and Haddad in this collection).<sup>28</sup>

## Conclusion

This article explored the enduring effects of de-Ba’thification on state and peacebuilding in Iraq. The permeation of de-Ba’thification during the formative statebuilding period bolstered its scope and mandate, framed the boundaries of inclusion and exclusion, and enabled state capture by previously disenfranchised ethnic elites, primarily Shia Arabs and Kurds. Bereft of parallel peacebuilding institutions, externally imposed democratization in Iraq produced a highly fractionalized and fractured transitional period that sanctioned elite capture and ethnic dominance of the emergent political arena. Consequently, the architects of Iraq’s post-Ba’thist transition created the same problem they sought to eradicate: the entrenchment and mobilization of Sunni-Arab grievances along Ba’thist lines.

## Endnotes

- 1 For an analysis on the legality and legitimacy of the occupation, see Asli U Bali, “Justice under Occupation: Rule of Law and the Ethics of Nation-Building in Iraq,” *The Yale Journal of International Law*, Vol. 30 (2005);
- 2 Political exclusion denotes the “denial of political rights to specific ethnic or ethnoregional communities, most notably the right to vote, organize political parties, freely contest elections, and thus become full participations in the political life of their country.” See, René Lemarchand, “Exclusion, Marginalization, and Political Mobilization: the Road to Hell in the Great Lakes,” in *Facing Ethnic Conflicts*, eds., Andreas Wimmer, et al (Lanham, MD: Rowman & Littlefield, 2004), 66.
- 3 On discriminatory institutions and ethnic conflict, see: Stefan Wolff, *Ethnic Conflict* (Oxford: Oxford University Press, 2006), 68.
- 4 Andreas Wimmer, *Waves of War: Nationalism, State Formation, and Ethnic Exclusion in the Modern World* (New York: Cambridge University Press, 2013), pp. 15-16.
- 5 Elmer Plischke, “Denazification Law and Procedure,” *The American Journal of International Law*, Vol. 41, no. 4 (1947), p. 807.
- 6 L. Paul Bremer III, *My Year in Iraq* (New York: Threshold Editions, 2006), p. 37-42.
- 7 Frederick Taylor, *Exorcising Hitler: the Occupation and Denazification of Germany* (London: Bloomsbury, 2011), pp. 281-82.
- 8 *Ibid.*, 301.
- 9 Two reasons explain higher Iraqi Shias Ba’th party membership alluded to in works by Sassoon and Blaydes, First, Shia over representation in Ba’th party membership is reflective of their majority demographics as they constitute the largest communal bloc in Iraq. Second, membership was mandatory for employment in state and civil service positions, which contributed to the overrepresentation of Shias as

the country's demographic majority. These two factors over the political economy aspect of Shia Ba'thist membership rather than an entrenched alignment of Shia Arabs to Ba'thist ideology.

10 Lisa Blaydes, *State of Repression* (Princeton: Princeton University Press, 2018), p. 164.

11 Ibid, 165.

12 David Siddhartha Patel, "ISIS in Iraq: What We Get Wrong and Why 2015 is not 2007 Redux", Crown Center for Middle East Studies, January 2015, available at: <http://www.brandeis.edu/crown/publications/meb/meb87.html>

13 John Ehrenberg, J. Patrice McSherry, José Ramón Sánchez, and Caroleen Marji Sayej. *The Iraq Papers* (New York: Oxford University Press, 2010), pp. 184-85.

14 Estimates fall within the noted range-see, for instance, David L. Phillips, *Losing Iraq* (New York: Westview Press, 2005), 145; U.S. Intelligence reports estimated the removal of the top 1% of all party members, or an estimated 20,000 people, see Bremer, 40. Colonel Joel D. Rayburn and Colonel Frank K. Sobchak, et al, place the estimate between 30,000-50,000 Iraqis including senior civil servants, military leaders, and university professors, p. 141.

15 Special Inspector General Iraq Reconstruction, *Hard Lessons: the Iraq Reconstruction Experience* (Washington: U.S. Government Printing Office, 2009), 75; Hashim (2003): 39; David H. Ucko, "Militias, Tribes and Insurgents: the Challenge of Political Reintegration in Iraq," *Conflict, Security and Development* 8.3 (September 2008): 343-44.

16 Special Inspector General for Iraq Reconstruction, *Hard Lessons: Iraq's Reconstruction Experience*, pp. 124-25.

17 Colonel Joel D. Rayburn and Colonel Frank K. Sobchak, et al., *The U.S. Army in the Iraq War, Vol. 1* (Carlisle Barracks, PA: US Army War College Press, 2019), p.140.

18 Shamiran Mako interview with General David Petraeus, 28 November 2018, Boston, MA.

19 Shamiran Mako interview with John Nixon, 21 May 2018, Boston, MA.

20 Wikileaks, "PRT Tikrit: the Effect of De-Baathification in Salah Ad Din", 11 December 2006, Cable: 06BAGHDAD745.

21 Shamiran Mako interview with Yonadam Kanna, 17 December 2017, Boston, MA.

22 Wikileaks, "PM Insider al-Askari on DeBaathification, Sunni Leaders and Ministerial Changes", 11 February 2007, Cable 07BAGHDAD451.

23 Fanny Lafourcade, "How to 'Turn the Page'? The National Iraqi Leadership After 2003 and the de-Baathification Issue", in *Writing the Modern History of Iraq*, eds., Jordi Tejel, Peter Sluglett, Riccardo Bocco, and Hamit Bozarslan (New Jersey: World Scientific, 2012), p. 190.

24 Shamiran Mako interview with Paul Bremer III, 28 March 2013, Boston, MA.

25 Lars-Erik Cederman, Andreas Wimmer, and Brian Min, "Why Do Ethnic Groups Rebel: New Data Analysis", *World Politics*, vol. 87 (2010), p. 88.

26 Albrecht Schnabel and Hans-Georg Ehrhart, "Post-conflict societies and the military: Challenges and problems of security sector reform," in *Security Sector Reform and Post-Conflict Peacebuilding*, eds., Albrecht Schnabel and Hans-Georg Ehrhart (Tokyo: United Nations University Press, 2005), 1.

27 *Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict*, the World Bank and the United Nations, p. viii, available at: <https://openknowledge.worldbank.org/handle/10986/28337>

28 Patel (2015).