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The crimes of neo-liberal rule in occupied Iraq

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**Brit. J. Criminol. 177* The scale and intensity of the appropriation of Iraqi oil revenue makes the 2003 invasion one of the most audacious and spectacular crimes of theft in modern history. The institutionalisation of corporate corruption that followed the invasion can only be understood within the context of the coalition forces' contempt for universal principles of international law enshrined in the Hague and Geneva treaties. Neo-liberal shock therapy imposed on Iraq by the Anglo-American government of occupation provided momentum to an economic order which privileged the primacy and autonomy of market actors over laws intended to enshrine universal protections for civilian populations in war and conflict. As the US government-appointed auditor has subsequently established, an unknown proportion of Iraqi oil revenue has disappeared into the pockets of contractors and fixers in the form of bribery, over-charging, embezzlement, product substitution, bid rigging and false claims. At least \$12 billion of the revenue appropriated by the coalition regime has not been adequately accounted for. This neoliberal strategy of economic colonization was facilitated by major violations of the international laws of conflict and by unilaterally granting immunity from prosecution to US personnel. The suspension of the normal rule of law by the occupying powers, in turn, encouraged Coalition Provisional Authority tolerance of, and participation in, the theft of public funds in Iraq. State-corporate criminality in the case of occupied Iraq must therefore be understood as part of a wider strategy of political and economic domination.

Saddam Hussein and his regime plundered your nation's wealth. While many of you live in poverty, they have the lives of luxury The money from Iraqi oil will be yours; to be used to guild prosperity for you and your families. (Tony Blair, 10 April 2003¹)

Bring a Bag! (Coalition Provisional Authority officer instructs private security firm Custer Battles on the method of collecting Iraqi oil revenue from the former Presidential Palace in Baghdad, 31 July 2003²)

Introduction

In criminology and in law, there has been some attention paid to debates on the legality of the 2003 invasion of Iraq and the definition of this war as a crime of aggression. There has also been some commentary on the war crimes that have been committed in the course of this crime of aggression, such as the torture of combatants, the targeting of civilians and the various crimes perpetrated by private military companies (e.g. Michalowski and Kramer 2005; Green and Ward 2004; O'Reilly 2005). The legality of economic rule--as opposed to military rule--in Iraq has attracted very little comment. During 14 months in office, the Anglo-American government of **Brit. J. Criminol. 178* occupation, the Coalition Provisional Authority (CPA), restructured the economy and spent over \$20 billion in Iraqi oil revenue, most of which was disbursed to US corporations by the CPA directly or via Iraqi ministries. Since the disbanding of the CPA, evidence of widespread corruption in the reconstruction economy has emerged. The economic governance of Iraq therefore raises important questions surrounding the legality of the occupation. In order to explore those issues, this article presents an analysis of primary data from fieldwork carried out at Iraq reconstruction conferences and trade fairs and an analysis of secondary data drawn from official sources.³

'Corruption' and Neo-Liberalism

Global strategies to tackle corruption are currently gaining coherence and momentum in the form of an emergent anti-corruption industry, supported by the most powerful governments and trans-national governmental institutions (Sampson 2005). Yet it is important to recognize that some forms of corruption, whilst generally condemned by trans-national organizations and nation states, can, from a liberal political economy perspective, be constructed as an efficient means of allocating resources. Levi supplies an example to illustrate this view:

In some *corruption* cases, it may be argued that there is no damage at all, and even a possible *benefit*. Let us consider the case of a building contractor who bribes an official--in the public or private sector--to let him know what the competition has bid for a contract. He then bids below the lowest offer. It is perfectly possible that the person or company awarded the contract might have put in a higher tender than the next lowest bid, and therefore the awarders of the contract have ended up paying more than they otherwise would have done. (Levi 1987: 29; emphasis in the original)

Some forms of corruption can therefore be constructed both as rational economic activity and as a function of 'hidden hand' market forces. The possibility that bribery can be represented as a rational mechanism of resource allocation brings to the surface a contradictory tension between market efficiency, as it is constructed in classical political economy terms, and the rule of law. There is an ongoing conflict in capitalist social orders between the maintenance of a system of rules and the internal logic of capital accumulation which encourages market actors to self-maximize. It is a conflict that, put simply, pits the rigidity of state-formulated rule systems against the exigencies of the market. This tension is intensified in advanced capitalist societies where it creates specific crises for the maintenance of rule systems (as witnessed most clearly in the series of large-scale frauds at the turn of the millennium that included WorldCom and Enron).

The ascendancy of neo-liberal market hegemony promotes a value system that elevates entrepreneurialism and the pursuit of self-interest above other social values. Neo-liberal ideology promotes the moral worthiness of profit-seeking in opposition to socialized systems of economic organization (Tombs 2001). Campaigns to reduce 'burdens on business' and to cut 'red tape', now ubiquitous **Brit. J. Criminol. 179* in the United States and Europe, are manifestations of this ideological war of manoeuvre. According to neo-liberal doctrine, the behaviour of participants in markets is best regulated by a 'hidden hand' as opposed to government rules. In other words, the boundaries between 'corrupt' and legitimate conduct should, wherever possible, be drawn out by the market, rather than by artificially imposed state regulations. There is therefore a tendency in neo-liberal capitalism to produce and reproduce relatively unregulated spaces for commercial activity. Neo-liberalism creates a fertile environment for 'corrupt' market transactions to flourish, because it seeks the creation of liminal space as a means of promoting entrepreneurialism and the pursuit of self-interest. For McLennan, 'the increased elevation of corrosive corporate market values' (2005: 158) in contemporary America has precipitated the normalization and institutionalization of lawbreaking and corruption in the US corporate sector.

In economies that move rapidly from an economic system dominated by state enterprise to a private enterprise-based economy, the process of transition normally entails a rapid process of re-regulation (the creation of new sets of rules), often known as 'shock therapy'. Neo-liberal shock therapy tends to involve the removal of regulatory controls upon individual economic actors and the creation of new sets of rules that encourage intense economic activity in particular fractions of the economy (normally by attracting inward investment on highly favourable terms). The pursuit of neo-liberal policies encourages liminal spaces to be developed at a pace faster than systems of regulation can be established. It is this combination of the creation of opportunities for unconstrained market activity and systemic corroding of regulatory controls that explains the tendency for pandemics of corruption and fraud to result from neo-liberal 'shock therapy' experiments in 'transitional' states (see Rawlinson 2002).

However, the relationship between the pursuit of private wealth accumulation and the rule of law should not be over-simplified. Although the preceding discussion points to a process of 'deregulation', economic systems cannot exist without reference to systems of rules (for example, rules that establish the infrastructural conditions for participation in markets and regulate relationships between competitors). This is well illustrated with reference to the ascendancy of new forms of property rights (such as intellectual property rights and the patenting of biological material) which depend on the creation of new bodies of law.

In liberal democracies, systems of rules are particularly important because economic policy must at least be seen to treat citizens with fairness and consistency. Whenever systems of economic governance are seen to break with normal legal conventions, or leave spheres of economic activity unchecked, they become vulnerable to legitimacy crises. Under conditions of neo-liberalism, formal equality and consistency are likely to be more difficult to guarantee because of the tendency of those conditions to produce liminal, unregulated spaces. The existence of such spaces--because they are, by definition, sites of rule non-compliance and lawlessness--are likely to produce market instability and, under some circumstances, political crises. Neo-liberalism's tendency to produce liminality exposes large sections of the population to market exigencies (causing, in the case of the

WorldCom/Enron collapses, job losses and loss of pension funds on a devastating scale). This paradoxical feature of neo-liberalism therefore provides momentum to popular demands for regulatory intervention and political strategies **Brit. J. Criminol. 180* aimed at imposing tougher regulatory controls on market actors (see, e.g. Alvesalo and Tombs 2001; Fooks 2003).

To sum up the argument so far, then, early twenty-first-century capitalist social orders are characterized by a contradiction between a practical need to observe the laws that structure, and place restrictions upon, economic activity on the one hand, and, on the other, an ideological impulse which places the values of 'free enterprise' above values of law observance. In transitional economies--particularly during neoliberal 'shock therapy' experiments--this impulse is concretised in the creation of liminal and relatively hidden spaces which provide fertile locations for 'corruption' involving private enterprise. It is in the creation of such spaces that we find an irresolvable contradiction in (neo-liberal) capitalism: the need to enforce a rule of law that preserves the viability and legitimacy of the economic system whilst reproducing an economic order that preserves the primacy and autonomy of market actors.

Neo-Liberal Shock Therapy in Iraq

The analysis of the relationship between corruption and the mode of economic governance set out in the previous section contrasts sharply with neo-liberal explanations of corruption that are currently popular in Western state discourse. From a neo-liberal perspective, corruption is defined as a violation of the distinction between private and public interest; corruption is normally precipitated by the over-concentration of macro economic decision making in the hands of public officials. This 'unnatural' concentration of political power over markets should be dealt with by encouraging the 'hidden hand' forces of the market, expressed in the decisions of competing, self-interested participants, and by rolling back the frontiers of the state (Shore and Haller 2005). Neo-liberal evangelising against public sector corruption is generally based on the claim that privatization and competition can purify corrupt state-enterprise dominated economies. The link between counter-corruption strategies and neo-liberal constitutionalism can be found with a growing frequency in the policies and public statements disseminated by the International Financial Institutions (IFIs) (Brown and Cloke 2004).

A key political justification for transforming the Iraqi economy post-Saddam was the eradication of endemic corruption in Iraq's public sector. Following the March 2003 invasion of Iraq, the Anglo-American regime of occupation sought to transform Iraq's economic system from a state-enterprise-based to a private-enterprise-based economy virtually overnight. The creation of a neo-liberal market economy, it was argued, would provide the most effective route to eradicating Iraqi government corruption. At the Rebuild Iraq conference, held in Amman, Jordan, in April 2005, coalition government representatives were united in their condemnation of Saddam's corruption and 'hatred for economic freedom'.⁴ A speaker from the US State Department condemned the 'tyranny of Saddam's planned economy', which bred 'lawlessness', 'economic corruption', an 'insecure business environment' and 'decades of subsidies for Iraqi industry'.⁵ The problems facing the reconstruction were blamed, wholesale, upon the 'cultural and social legacy from the command economy system'. Thus, '[t]he transition from a command economy to a modern economy doesn't just mean sorting out the mess, it **Brit. J. Criminol. 181* requires social and cultural change'. This transition could only be secured peacefully by 'imparting an efficient system of commercial law'.⁶

In 14 months in office, the CPA issued 100 legally binding administrative orders by decree. Together, the orders formed the foundations of Iraq's new economy, criminal justice system and political structure. Those orders erected the pillars of a neo-liberal economy: the abolition of state production and commodity subsidies; the eradication of import tariffs and trade barriers (Order 12); the deregulation of wage protections and the labour market (Order 30); tax reform (Order 37); monetary reform and reforms in the banking sector (Orders 18, 20, 40, 43, 74 and 94); the establishment of international trade rules based on the World Trade Organisation (WTO) model (Orders 54, 81 and 83); and the privatization of state enterprises (Orders 39, 46 and 51). The regime was founded on the principle of 'trickle down' economics: the idea that wealth can be created and development stimulated by creating favourable terms of investment for private capital.

According to Chief CPA Administrator, Paul Bremer, the priority for the CPA was to end the system of state subsidies because of the market distortions they caused. The economy was based upon the 'false premise' of efficiency and low-cost commodities (Bremer 2006: 66). 'Destructive' and 'distorting' subsidies impeded Iraqi competitiveness and prevented Iraq's full participation in the global

marketplace. Iraq's membership of the World Trade Organisation was envisaged by the CPA as a central plank of the reform process (CPA 2004a). Price mechanism reforms, such as Order 12, which suspended customs and duty charges on goods entering the country, sought a *de facto* imposition of WTO rules prior to application for membership of the WTO.⁷ Another key example here is Order 81, which effectively outlawed the informal sharing of farm seed supply system that has survived in Iraqi farming for years. The order forced farmers to use the protected varieties sold to them by their 'owners', the trans-national bio-firms, in line with the WTO patent regime.

The clearest statement of intent for the future of the Iraqi economy is contained in Order 39, which permitted full foreign ownership of Iraqi state-owned assets and decreed that over 200 state-owned enterprises, including electricity, telecommunications and the pharmaceuticals industry, could be dismantled. Order 39 also permitted 100 per cent foreign ownership of Iraqi banks, mines and factories; and allowed these firms to move their profits out of Iraq. It has been argued already in the British courts that Order 39 constitutes an act of illegal occupation under the terms of the Hague and Geneva treaties (Corporate Pirates 2005a ; 2005b). Article 55 of the Hague regulations asserts that occupying powers are only permitted to administer public assets. Article 55, by invoking the rules of usufruct, expressly forbids altering the structure of public resources: '... [t]he occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.' The effect of Article 55 is to outlaw privatization of a country's assets whilst it is under occupation by a hostile military power.

***Brit. J. Criminol. 182** Although Order 39 represented a clear breach of the spirit of international law, in the end, the CPA did not complete the sale of Iraqi state enterprises, preferring to leave the implementation of their privatization blueprint to future Iraqi governments. It is likely that this decision was taken in the knowledge that privatization would have breached international law. The British government's obligation to ensure that the economic governance of Iraq complied with the international laws of conflict was brought to the attention of the UK Prime Minister, Tony Blair, by his Attorney General. Members of the Iraqi Interim Government were also made aware that economic restructuring of the economy was most probably illegal (Klein 2003; 2004a). The CPA's caution in privatizing Iraqi industries, however, does not absolve the Anglo-American occupation from its responsibilities under international law.

Economic Occupation and International Law

The Geneva and Hague rules make very clear the circumstances under which an occupying power can impose new laws upon a population without first seeking its consent. Article 43 of the Hague Regulations specifically states that an occupying power 'shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country'. In addition, Article 64 of the Geneva Convention of 1949 permits the occupying power to 'subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations ... to maintain the orderly government of the territory, and to ensure the security of the Occupying Power'. The intention of Article 64 is explicit: to permit the imposition of a new set of laws by an unelected occupying power if those rules are essential for orderly government and for security purposes. CPA rules which erected a neo-liberal economic system in Iraq can therefore be regarded as falling beyond the limits of the powers of an occupation government laid down by the Geneva Convention, because the complex of economic rules (e.g. abolition of commodity protections, or the abolition of seed sharing) imposed upon Iraq were not essential for maintaining orderly government and security.

Although the CPA eventually retreated from enacting the formal privatization of state-owned industries, the laws introduced by the Authority had profound and perhaps irreversible *structural* consequences for the Iraqi economy. According to Asad al-Khudhairi, the leader of the Iraqi Contractors' Federation, the dumping of foreign commodities on Iraq 'killed' the country's industries. Al-Khudhairi estimates that at least 25,000 'businessmen' have been forced out of business as a consequence.⁸ Following the implementation of CPA Order 12, the Iraqi economy quickly became a target for the economic 'dumping' of manufactured products, food and raw materials. Within a few days of the order being passed, surplus chicken legs from the United States were being shipped in to Iraq by American company Tyson, forcing the market price of chicken down to \$1.25 a kilo--5 cents below the cheapest price that Iraqi producers could sustain (Colliers 2003). There is also evidence that commercial decisions made by the CPA deliberately sidelined Iraqi producers in favour of more expensive foreign

producers as part of a 'starve then sell policy' (Klein 2004a). The CPA did nothing to reverse the **Brit. J. Criminol. 183* deterioration of Iraq's refinery capacity (which intensified under the UN sanctions regime and then was exacerbated by the military invasion). Because of this, Iraq remains dependant upon import of refined petroleum products (SIGIR 2005b : 18).⁹ Some business people close to the reconstruction process argue that this was a deliberate strategy to ensure Iraqi reliance on oil exports.¹⁰ Elsewhere, this process has been described as 'selling oil to the Iraqis' (Tyler 2005).

Nowhere does permission for the restructuring of the Iraqi economy, for introducing WTO compliant policies or for passing laws that propel the economy into reliance upon foreign capital feature in any of the UN resolutions that gave legitimacy to the CPA. The role of the CPA in those resolutions is clear: to meet the 'humanitarian needs of the Iraqi people', to meet the costs of 'reconstruction and repair of Iraq's infrastructure', to meet the costs of disarmament and the civil administration of the country and other purposes 'benefiting the people of Iraq'. The terms of UNSCR 1483 are unequivocal in this regard. It was this resolution that established the Development Fund for Iraq (DFI). The DFI--physically held in an account at the Federal Reserve Bank in New York--acts as a repository for Iraqi oil revenue confiscated by the UN Oilfor-Food Programme and subsequently for revenue from post-invasion oil sales and exports.

The disbursement of Iraqi oil revenue by the CPA also has had profound implications for the future structure of the Iraqi economy. The estimated CPA spend, in excess of \$20 billion, was funded by both *actual* and *projected* Iraqi oil income. Spending based upon projected income had to be underwritten by the US government loans. This meant that some DFI-funded projects were first funded by the US treasury and then repaid from the DFI. The US Export-Import Bank also provided guarantees to US firms involved in the reconstruction (Export-Import Bank of the United States 2003). The spending of Iraqi oil revenue has effectively deepened the debt that was originally accumulated during the period of UN-enforced sanctions following the 1991 Gulf War (Alexander 2005). The first IMF loan to Iraq was approved on 24 December 2005 and intensified Iraq's dependency upon external capital.

It is the anti-democratic and pre-emptive nature of Anglo-American economic restructuring that most clearly demonstrates that the CPA regime was in violation of international law. The Hague and Geneva rules were developed to establish a set of universal principles to protect the democratic sovereignty of populations under occupation. International law establishes limits on the conduct of government during the period before a system of legitimate democratic rule can be established. The right to self-determination and sovereign decision making over economic, social and cultural development is in international law a principle of *jus cogens* (Wheatley 2006). Yet, the CPA embarked upon its transformation of the Iraqi economy before the point that its policies could be ratified or rejected by a democratic process. In this regard, the CPA clearly acted beyond its remit in terms of both the spirit and the letter of the international laws of conflict. Similar violations arise from the CPA's governance of Iraqi oil wealth. Article 49 of the Hague rules notes that 'money contributions' levied in the occupied territory 'shall only be for the needs of the army or of the administration of the territory in question'. The Hague rules appear to explicitly forbid the accumulation of 'money contributions' for **Brit. J. Criminol. 184* any other purposes than basic security and administration. The disbursement of oil revenue by the CPA, as the next section of the article indicates, went far beyond those purposes.

Suspending the Normal Rule of Law, Creating Liminal Space for Capital

CPA administrators were, in the early days of the occupation, frustrated by the bureaucratic time delay that affected both US and UN sources of reconstruction revenue (Bremer 2006: 139). Commenting on the reconstruction funds set aside by the US Congress, Bremer has noted that 'The bureaucracy in Washington imposed what I saw as overly rigid interpretations of the regulations on letting contracts, which already required long lead-in times'. The alternative to the 'slowness of Washington' was to 'just find the money somehow in the Iraqi budget' (Bremer 2006: 276). DFI funds were used simply because they offered an immediate source of funding that was subject to negligible bureaucratic controls. Using revenue allocated by the US Senate or other donor sources such as the European Union would have been subject to a set of prescribed accounting standards. In other words, foreign donor funding was governed by cumbersome and obstructive 'red tape'.¹¹ By the end of the CPA's term in office, only a very small proportion of non-Iraqi revenue was actually spent by the CPA (Catan 2004). Almost a year later, at the end of March 2005, only 7.1 per cent of the \$18.4 billion Iraq Relief and Reconstruction Fund (IRRF) allocated by the US government had been disbursed (SIGIR 2005a : 2).

DFI revenue, on the other hand, was available to the CPA immediately, in the form of \$100,000

bundles of \$100 bills, shrink-wrapped in \$1.6 million 'cashpaks'. Pallets of cashpaks were flown into Baghdad direct from the US Federal Reserve Bank in New York. Some of this cash was held by the CPA in the basement of its premises in Baghdad Republican Palace. It has been reported that Paul Bremer controlled a personal slush fund of \$600 million (Harriman 2005). One advantage of the use of cash payments and transfers was that the CPA transactions left no paper trail and therefore they remained relatively invisible.

The political strategy underpinning the creation of the reconstruction economy was characteristically neo-liberal (evasion of 'red tape' and any obstacles that might hinder or limit the the reallocation of wealth to the growing armies of private enterprises ready to enter the reconstruction economy). This strategy was given momentum by the granting of formal legal immunity to US personnel for activities related to the reconstruction economy. On the same day that the CPA was created by UNSCR 1483, George W. Bush signed Executive Order 13303, which prohibited any 'attachment, judgement, decree, lien, execution, garnishment, or other judicial process' with respect to the DFI and all Iraqi petroleum, proceeds from the sale of petroleum, or any interests in Iraqi petroleum held by the US government or any national of the United States.¹² The terms of the exemption provide immunity from prosecution for the theft or embezzlement of oil revenue, or incidentally, from any safety or environmental violations that might be committed in the course of producing Iraqi oil. Executive Order 13303 is therefore a guarantee of immunity from prosecution for white-collar and corporate crimes that involve Iraqi oil. Two months later, in June 2003, Paul Bremer issued CPA Order 17. Bremer's decree guaranteed that members of the coalition military forces, **Brit. J. Criminol. 185* the CPA, foreign missions and contractors--and their personnel--would remain immune from the Iraqi legal process. This *carte blanche* provision of immunity was extended again in June 2004.

What we are beginning to trace out here is a US government policy of suspending the normal rule of law in the US and Iraq. The legality of Executive Order 13303 has subsequently been challenged by academic lawyers (e.g. Kelly 2004). However, there has been little public debate surrounding either Bush's or Bremer's guarantees of immunity and they have received minimal attention in the mainstream press. In what looks like a nod to Article 64 of the 1949 Geneva Convention, Executive Order 13303 notes that judicial interference or financial instruments are likely to obstruct 'the orderly reconstruction of Iraq'. But merely mentioning the law is not the same as complying with the law. Executive Order 13303, on the contrary, provides as clear an indication as is possible of the Bush administration's intention to create a liminal space for capital, unhindered by domestic and international law.

The Bush administration's systems for monitoring and controlling the disbursement of Iraqi oil revenue was characterized by precisely the same policy of eradicating accountability for reconstruction contracts conjured up in Executive Order 13303 and CPA Order 17. UNSCR 1483 stipulated that the DFI was 'to be audited by independent public accountants approved by the International Advisory and Monitoring Board of the Development Fund for Iraq and looks forward to the early meeting of that International Advisory and Monitoring Board'. However, according to one assessment, the International Advisory and Monitoring Board (IMAB) was unnecessarily obstructed by Paul Bremer and was successfully prevented from receiving its mandate until a full five months into the CPA's term of office (Iraq Revenue Watch 2003).

Subsequently, the CPA took 11 months to appoint its internal auditor, the Special Inspector General for Iraq Reconstruction (SIGIR). SIGIR had only a matter of weeks before the CPA was dissolved to complete its first report (Iraq Revenue Watch 2003: 16). Those delays were crucial in hindering the ongoing audit of CPA activities. SIGIR was given a limited monitoring role after its investigative and enforcement powers were denied IMAB following successful lobbying by US government representatives (Lawson and Halford 2004: 7).

With a neutralised regulatory regime in place, the CPA and the US government continued to block audits and investigations throughout the Authority's term of office. KPMG Bahrain--the auditors that were finally appointed after US approval--noted that CPA officials refused to cooperate with its investigations (*Financial Times*, 22 June 2004). The UN Representative to the IMAB accused the Bush administration of refusing to hand over internal audits conducted by the CPA (*Washington Post*, 16 July 2004). Subsequently, KPMG concluded in their audits that there were no adequate systems to monitor the inflows and outflows from the DFI. The accountancy firm also concluded that the CPA produced insufficient reasoning to justify non-competitive contracts, a lack of evidence that services had been provided and a lack of receipts for goods supplied and discrepancies in the amounts charged (KPMG Bahrain 2004; IMAB 2005b).

All available audits indicate that the disbursal of DFI revenue was conducted with little or no adequate system of monitoring or accounting. KPMG found 37 contracts totalling more than \$185 million for which no contracting files could be located, a case in which an unauthorized advance of almost \$3 million was paid out by a CPA senior advisor, and a case in which auditors found that instead of cheques being made out to **Brit. J. Criminol. 186* contractors, they were issued personally to the CPA appointed head of the Ministry of Health, James Haveman (KPMG Bahrain 2004). In the case of a \$2.6 million payment authorized by the CPA's senior adviser to the Ministry of Oil, IMAB auditors were unable to find a contract, evidence of tender procedures or evidence of any services rendered (Catan 2004). The CPA kept no list of companies that it issued contracts to. In addition to the discrepancies noted above, a report by IMAB (2005a) found evidence of incomplete DFI accounting records; untimely recording, reporting, reconciliation and follow-up of spending by Iraqi ministries; incomplete records maintained by US agencies, including disbursements that were not recorded in the Iraqi budget; lack of documented justification for limited competition for contracts at the Iraqi ministries; possible misappropriation of oil revenues; and significant difficulties in ensuring completeness and accuracy of Iraqi budgets and controls over expenditures. It is estimated that between \$8.8 billion and \$12 billion of DFI revenue remains unaccounted for.¹³

All of this indicates a further breach of compliance with international law on the part of the CPA. UNSCR 1483 stipulates the purposes that the DFI revenue must be used for, and emphasizes that it must be used 'in a transparent manner'. The lack of accounting systems for large sums of spending during the CPA's period of office ensured that the reconstruction contracts were more likely to remain invisible rather than 'transparent'. The US government-appointed auditor SIGIR has concluded that 'there was no assurance that the funds were used for the purposes mandated by United Nations Security Council Resolution 1483' (SIGIR 2005a : 16-17; on this position, see also Christian Aid 2003: 13). IMAB (2005a) noted that the lack of accounting for CPA spending constituted a breach of the Authority's obligations under UNSCR 1483.

UNSCR 1483 had also stipulated that 'all export sales of petroleum, petroleum products, and natural gas from Iraq following the date of the adoption of this resolution shall be made consistent with prevailing international market best practices, to be audited by independent public accountants reporting to the International Advisory and Monitoring Board'. Yet, a meeting of the CPA's funding oversight committee, the Program Review Board, noted in April 2004, almost a year after the CPA had taken power, that 'Metering for crude oil extraction and sales is presently nonexistent in Iraq' (CPA 2004b : 10). KPMG also found critical deficiencies in the State Oil Marketing Organization records of oil revenues (Iraq Revenue Watch 2004c). In one example, cash advances for oil sales 'amounting to over \$20 million, were deposited into an Iraqi Bank account of the State Oil Marketing Organization, instead of going to the DFI' (Iraq Revenue Watch 2004d : 2).

In sum, the Anglo-American occupation, by a combination of suspension of the normal rule of law, and the eradication of normal mechanisms of scrutiny, created a liminal market space for capital that was designed to facilitate the transformation of the Iraqi economy. As the previous section's discussion of the CPA's neo-liberal constitutionalism indicates, the over-riding principle of occupation was the creation of a new rule of law--a regulatory infrastructure designed to stimulate the new markets opened up by the CPA. National and international laws were thus subordinated to neo-liberal principles of economic organization.

****Brit. J. Criminol. 187 Corruption for the Benefit of American Corporations***

Throughout the CPA's term of office, the rapid delivery of reconstruction projects to Western--mainly US--contractors was the over-riding principle dictating the distribution of DFI funds. US firms Kellogg Brown and Root (a subsidiary of Halliburton), Parsons Delaware, Fluor Corporation, Washington Group, Bechtel Group, Contract International, Louis Berger and Perrini were recruited early on in the occupation with responsibility to act as 'prime contractors', coordinating the reconstruction of key sectors of the economy and engaging sub-contractors to do the work.¹⁴ It was reported in July 2004 that 150 US firms had collectively landed reconstruction contracts in Iraq and Afghanistan worth \$48.7 billion. One analysis of Iraqi reconstruction contracts concludes that US and UK companies received 85 per cent of the value of contracts worth over \$5 million tendered by the CPA whilst Iraqi firms received just 2 per cent of the value of those contracts (Iraq Revenue Watch 2004b). Most went to US firms. In one period examined between 2003 and 2004, more than 80% of prime contracts were given to US companies, with the remainder of the revenue split between UK, Australian, Italian, Israeli, Jordanian and Iraqi companies (Herring and Ragwala, 2005).

If a rudimentary strategy of redistributing Iraqi oil revenue to US contractors was not clear at the outset, events in the closing days of the CPA left no doubt about the Authority's intention. Shortly before it disbanded, the CPA's Program Review Board distributed a sum that has been estimated to be between \$2 billion and \$5 billion in contracts *en masse* for projects that were, in the main, conceived shortly before the handover of power (CPA 2004c ; Iraq Revenue Watch 2004a ; Giraldi 2005). Many of those transactions were unrecorded; some were based on paperwork submitted just hours before the CPA's period of office ended; and some invoices were submitted by individuals shortly before they left the country (Iraq Revenue Watch 2004a).

Commercial advantages for Western contractors were consolidated by applying two contracting mechanisms. First, the CPA tendered a very high proportion of bids noncompetitively--a strategy that allowed the Authority to handpick contractors. In one estimate, 73 per cent of all contracts worth more than \$5 million were tendered noncompetitively (Iraq Revenue Watch 2004d : 2). This includes Kellogg Brown and Root's contract of \$1.4 billion to repair and rebuild the oil infrastructure. Contractors reported receiving contract by telephone contact without any formal bidding process. (Tyler and Bonner 2003; see also Phinney 2005). Second, where bids were competitively tendered, they incorporated very short periods of notice (Christian Aid 2003). Short tendering is generally considered to encourage corruption because it creates unassailable competitive advantages for contractors that are given advance warning of the contract window. Delegates at Iraq reconstruction conferences complained frequently about the use of short-tendering in this way. One delegate described how a contract for supplying government employees with water was issued two days before the deadline. Specifications of the contract had been already been disclosed to a favoured firm weeks **Brit. J. Criminol. 188* in advance of the announcement of the tender. This firm subsequently won the contract.¹⁵

The high profitability of reconstruction contracts was guaranteed via a system of 'cost-plus' contracts. Under US government accounting practice, 'cost-plus' contracts allow for additional merit-based payments to be made from an 'award-fee pool' if the performance exceeds contractual requirements. Middle managers operating in Iraq report that such payments were often made with little scrutiny by the bid holder.¹⁶ A US government audit of 18 IRRF contracts worth \$6.75 billion issued by the Department of Defence found that an additional 50-74 per cent of the award-fee pool was being awarded for average performance in nine contracts and, in seven contracts, the award-fee plans had permitted awards of an additional 60-70 per cent for performance that was deemed to be above standard in several aspects of while still allowing several weaknesses in performance to remain (SIGIR 2005b : 36). Where there are inadequate checks on performance, cash-plus contracts enable unscrupulous firms to inflate the value of the contract.

Over-charging was routine in reconstruction contracts (US Senate Democratic Policy Committee 2003). A US Defence Contract Audit Agency audit of Kellogg Brown and Root's contract to restore Iraqi oil fields found \$108 million in 'unresolved costs' (in other words, spending that had not been properly accounted for; DCAA 2005). In one incident uncovered by the auditors, Kellogg Brown and Root (KBR) charged the Army more than \$27 million for transporting \$82,000 worth of fuel from Kuwait to Iraq (DCAA 2005). This was merely one in a long line of audits that uncovered millions of dollars' worth of discrepancies in KBR contracts. Sales of faulty or nonexistent supplies were common-place in CPA contracts, including a fleet of un-flyable military planes (Giraldi 2005; *Los Angeles Times*, 30 July 2004). Ghost armies of employees are commonplace in Iraq and payrolls inflated as a matter of routine (Mekay 2004). In one case, payment for 74,000 guards could not be accounted for, and, in another case, 8,206 were listed on a payroll, but only 603 employees had actually been paid.¹⁷

The lack of basic record keeping and monitoring and the culture of bribery that cascaded out from within the CPA created a fertile environment for corporate corruption. A wealth of evidence points to a routinized system of bribery in the CPA. One British advisor to the Iraqi Governing Council told the BBC that officials in the CPA were demanding bribes of up to £300,000 to secure contracts (Harriman 2005). Iraqi business people report that they had to pay 'middle men' substantial bribes even to be allowed to bid for CPA contracts.¹⁸ Western and Iraqi business representatives use the term 'Ali Babas' to describe a new layer of entrepreneurs that exist as 'fixers', moving between government and business players and making a healthy income solely from bribes.¹⁹ The first case of an American contractor to be charged with corruption in Iraq provides us with a brief insight into this system of 'kickbacks'. Philip H. Bloom, who **Brit. J. Criminol. 189* controlled three companies involved in the reconstruction, is alleged to have paid a total of \$2 million in bribes and gifts to CPA officials. Bloom admitted that between December 2003 and December 2005, he and Robert Stein, a CPA Regional Comptroller, conspired to rig bids on CPA contracts to a value of \$8.5 million. Bloom and Stein were

convicted of fraud offences by the US Federal courts (SIGIR 2006).

In summary, then, a CPA strategy of concentrating Iraqi oil wealth in the hands of US corporations was facilitated by appointing US prime contractors as gatekeepers in the reconstruction process and by using contracting mechanisms which guaranteed that US firms would dominate the reconstruction market. A high-value cost-plus system of contracts minimized any commercial risks and most likely encouraged a culture of over-charging. The liminal spaces created by the suspension of the normal rule of law encouraged the normalisation of corruption in the CPA and the companies involved in the reconstruction effort. In other words, corruption became a routine activity, embedded in the key institutional apparatuses of the economy.

The institutionalization of corruption in the Iraqi reconstruction economy is comparable to the era of the robber barons in the United States and the epidemic of fraud and embezzlement in the United Kingdom in the late nineteenth century/early twentieth century (Robb 1992). This was a period in which the monopolization of capital in industrialized economies facilitated and encouraged routine lawbreaking amongst business elites. Moral authority during this period was derived from popular appeals to the *laissez-faire* liberal ideal. In the modern era, corporate raids on foreign markets are made with the reference to a developed system of neo-liberal rules that cover a growing proportion of the world's markets (Whitfield 2001; Tombs and Whyte 2003). Despite huge differences across economies, institutions such as the IFIs and the WTO allow marauding capital to lay claim to a *global* set of norms that may, as in the case study set out here, challenge directly basic principles of national and international law. As we have seen in relation to the attempt to impose a WTO model of trade rules on occupied Iraq, the rise to prominence of transnational neo-liberal institutions provides capital with a means to claim a *global* moral authority that could not be so easily invoked in previous stages of capitalist development.

Token Enforcement

It is difficult to reconcile the strategy of the occupiers with the authority vested in the CPA by the UN Security Council. UNSCR 1483 states that 'the Development Fund for Iraq shall be used ... to meet the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq's infrastructure, for the continued disarmament of Iraq, and for the costs of Iraqi civilian administration, and for other purposes benefiting the people of Iraq'. Whilst the spending of Iraqi revenue was, strictly speaking, permitted by the agreement of the UN Security Council, a spending spree at such a pace with such a clear bias towards American firms that involved such a profligate and criminal waste of Iraqi resources could hardly be regarded as 'benefiting the Iraqi people'. Yet, it is not very likely that the UK or the US government will be investigated or challenged for its breaches of UNSCR 1483 or for its economic war crimes.

Instead, we are likely to see a few token cases against corporate and CPA officials. It is instructive in this respect that corruption cases involving CPA officials have surfaced in the courts in two cases initiated by whistleblowers. The *Bloom* case, noted above, is one **Brit. J. Criminol. 190* of them. In a second prosecution in March 2006--a civil case initiated by two whistleblowers--the court found the private military company Custer Battles guilty of 37 separate fraudulent acts under the US False Claims Act--a civil law procedure that carries the penalty of punitive damages in cases of fraud. The company had overcharged the CPA for leasing equipment and had charged for services that had not been provided (*Washington Post*, 15 February 2005; *USA Today*, 10 March 2006). The key fraud charges in this case involved the procurement of payments made in \$100,000 cash bundles derived from DFI funds. In evidence to the Senate Democratic Policy Committee, a CPA official, Franklin Willis, reported that he had phoned Mike Battles and instructed him to 'bring a bag' to collect a payment of \$2 million for security services. Those services, the court heard, were never actually provided (Willis 2005).

The point of law that the *Custer Battles* case turned on was significant in so far as it represented the first legal challenge to the US government's suspension of the normal rule of law. The False Claims Act allows whistleblowers to file a suit against a company for defrauding the United States. In such cases, the Act provides for the US Justice Department to opt to join the suit with the plaintiffs. In October 2005, the Justice Department declined to join the *Custer Battles* case without giving any reason for its decision. The most likely reason is that the US government had no wish to involve itself in debates about the status of DFI revenue. The False Claims Act only applies to US government revenue and the defence in the *Custer Battles* case argued that the Act did not apply since the allegation related to *Iraqi* rather than *US* funds. The District Judge ruled that since one of the advances received by Custer Battles for \$3 million was identified as originating from a US Treasury

check, the jury had to restrict its decision to this sum.²⁰ This ruling therefore implies that cases initiated under the False Claims Act would not apply to Iraqi oil revenue. It also means that the efficacy and legal integrity of the blanket protections afforded to US nationals by Bush's Executive Order 13303 remains untested in the US courts. It is worth noting that the *Bloom* case did not test the voracity of the 13303 either, since the prosecution related exclusively to contracts paid by US federal funds (SIGIR 2006). The trickle of post-hoc cases (there have been 72 cases investigated by SIGIR since January 2006, and only one of those cases actually led to an arrest; SIGIR 2006) suggests that the principle of immunity for government and corporate occupiers has largely been kept intact.

This is not to say that the removal of accountability sought by the US government could ever have been complete. As the opening section of this article argues, in order to preserve legitimacy, dominant state institutions in capitalist social orders must at least appear to uphold values of consistency and equality in law. However, as yet, there has been no legitimacy crisis in the United States on the question of the economic occupation. Neither has there been in the United Kingdom, despite the efforts of groups such as Corporate Pirates and Corporate Watch (Christadoulou 2006). This may, of course, change. US policy in Iraq is particularly vulnerable to criticism at the moment, especially from within the ranks of the so-called neo-cons (*The Independent*, 9 March 2006; Fukuyama 2006). But it is in Iraq, where awareness of the expropriation of Iraqi oil revenue is intensifying, that the opposition to neo-liberal rule will continue to cause problems for the occupation.

***Brit. J. Criminol. 191 Conclusion**

A key effect of neo-liberal hegemony building is the subjugation of the norms of international law to the norms and values of the 'free' market. The economic transformation of Iraq was made possible only because the Anglo-American occupation was prepared to ignore international law (specifically the *jus cogens* sovereign right of a people to determine their own social, economic and cultural future) in the rush to establish a WTO-compatible economy. The neo-liberal regime imposed upon the Iraqi people by the CPA facilitated the transferral of Iraqi oil revenue into the hands of Western corporations with no mandate from the Iraqi people. The economic occupation is therefore clearly definable as a war crime under the terms of the Hague and Geneva treaties.

This raises a point of international law that is yet to be debated: future Iraqi governments may have a legitimate claim in the United Nations Compensation Commission for reparations and compensation accrued by the illegal policies embarked upon by the CPA. This is the process that previously enabled US corporations such as Toys R Us, Halliburton, Bechtel, Mobil, Shell, Nestlé, Pepsi, Philip Morris and Kentucky Fried Chicken used to claim compensation from the Iraqi people for Saddam's breaches of international law (Klein 2004b). Because the country remains governed by a political and economic system imposed illegally under conditions of occupation (see also Wheatley 2006), the planned privatization of oil in the form of production-sharing agreements can also be clearly defined as a war crime.

The presence of British and Australian government representatives as members with full voting rights on the CPA's Program Review Board (the committee given responsibility for immediate oversight of the CPA spend) implicates the governments of Australia and Britain, as well as the US government, for breaches of the Geneva and Hague Conventions, and of UNSCR 1483.²¹ Lack of debate in the UN Security Council and the absence of cases before International Court of Justice or the International Criminal Court do not preclude us from describing the CPA's breaches of international law unambiguously as state crime (Green and Ward 2004). The illegal economic occupation--and the expropriation of Iraq's oil wealth that followed--can be defined unambiguously as state-initiated crime (Kramer *et al.* 2002).

There is a deeply embedded aspect of the relationship between 'crime' and capitalist institutions that is revealed here. Wherever regulatory systems set the threshold of legality, the principle of self-maximization encourages market actors to find the most effective way of circumnavigating, subverting and breaching the legal threshold. The creation of liminal space under conditions of neo-liberal constitutionalism merely intensifies this tendency. In so far as the US government sought to suspend the rule of law (most clearly exemplified by Executive Order 13303 and CPA Order 17) and deliberately obstructed the normal mechanisms of scrutiny and audit, the viral corruption that infected the Anglo-American regime of occupation can also be categorized as state-facilitated crime (ibid. 2002).

In Iraq, war crimes and offences against Iraqi oil wealth powerfully combined to establish a neo-liberal colonial order. Just as the violation of basic principles of international ***Brit. J. Criminol. 192** law was

a necessary pre-condition for the capture of the economy, the endemic corruption that we have witnessed in Iraq was a key element of the regime of occupation. In some ways, the form of capitalist development under discussion in this article displays the tendencies of Tilly's (1985), Blok's (1974) and Gallant's (1999) analyses of early modern processes of state formation. Each of those authors has noted, from different perspectives, the centrality of violence and criminal economic activity to the emergence of the nation state system. Corruption under CPA rule extended the structural advantages necessary for Western firms to penetrate- and transform- the economy. The corruption of the reconstruction economy was therefore a by-product of, and a means of providing momentum to, the transformation of the economic order. The crimes of economic occupation documented in this article have, quite simply, been used as a means of achieving neo-colonial dominance in occupied Iraq.

Note on Methodology

The data used in this article were derived from semi-structured interviews and participant observation conducted during three fieldwork trips to corporate events that were organized to facilitate the reconstruction of Iraq. Two of the events were held in Amman, Jordan ('Rebuild Iraq 2005', 4-7 April and 'Iraq Procurement 2005', 28-30 June) and one in London ('Iraq Telecommunications Conference', 21-22 July 2005). A total of 32 interviews were conducted. Twenty-two interviews were conducted with middle-level managers of businesses operating in Iraq, five with representatives of chambers of commerce and trade associations from the United States, the United Kingdom and Iraq, and five UK and US government and military officials involved at various stages of the procurement process. Qualitative interviews at those events were supplemented with participant observation. These data included recordings of casual conversations between the author and delegates and recordings of the contributions made by, and debates between, senior government and military officials at the conferences. Reference codes for interviews and fieldwork notes are used throughout the article. In those codes, the prefix 'I' indicates that the reference is to an interview with a participant/delegate. The prefix 'C' indicates that the reference is to fieldwork notes and taped material from one of the conferences. In order to test the validity of the fieldwork data, this article also drew upon analysis of a range of official documentation available in the public domain: US government senate inquiries; the documentation published by the Coalition Provisional Authority (including minutes of the Program Review Board meetings); and audit reports published by the UN Auditor the International Advisory and Monitoring Board and the US government appointed Special Inspector General for Iraq Reconstruction. In order to verify as far as possible the findings of official inquiries and audits, and complete a process of triangulation, the analysis here also draws upon reports produced by monitoring agencies and nongovernmental organizations, including detailed qualitative assessments of fraud and waste produced by Iraq Revenue Watch and Christian Aid.

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 3. A detailed methodological note is included at the end of this article.
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 5. Fieldwork reference C1/6.
 6. *ibid.*
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 8. Fieldwork reference C1/3
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 11. Fieldwork references C1/5, C1/7 and C2/4.
 12. The full text of this Executive Order 13303 can be found in Office of the Press Secretary (2003).
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 14. Most of the prime contractors are US firms. In one exception to this rule, US company Fluor created a joint venture with British firm AMEC. For the duration of Bremer's term of office, a CPA executive order prevented the disbursal of reconstruction funds to non-coalition partners. For analyses of the distribution of reconstruction funds to the prime contracts see <http://www.corpwatch.org/article.php?list=type&type=176>; for a comprehensive analysis of the distribution of CPA funds, see the Centre for Media and Democracy diagram at <http://www.govexec.com/features/0704-01/WebOfReconstruction.pdf>.
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