

'The Pomegranate Tree Has Smothered Me': International Law, Imperialism & Labour
Struggle in Iraq, 1917-1960

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Abstract

This dissertation delves into the legal and labour history of Hashemite Iraq (c. 1921-1958) to explore the role international law and its institutions played in Iraq's state formation, as well as, the imperial control of the semi-peripheral region of the Middle East. By highlighting the historical specificity of the semi-periphery in international legal history, it shows how Iraq was a laboratory for experimentation with the concept of sovereignty. A unique doctrine of 'semi-peripheral sovereignty' was skillfully developed by the Permanent Mandates Commission of the League of Nations in Geneva and embedded in the 1930 Anglo-Iraq Treaty to ensure Iraq's 'independence' in 1932 maintained geopolitical and imperial interests that were specific to the region, especially the extraction, production and transportation of Iraqi oil to the Mediterranean.

The material effects of this international legal doctrine on the everyday lives of working class Iraqis is traced by looking at how it intersected with British imperial law, land law, the transnational law of oil concessions and pipeline agreements, criminal law and emergency law. The spaces and semi-colonial enclaves of capitalist production and trade of the oil fields in Kirkuk, the railways in Baghdad and the Port of Basra, and their corresponding governing structures are then detailed in micro-histories with the aim of analyzing the manner in which the oil, port and railway workers organized against the semi-colonial and imperial legality that was imposed upon them.

The dissertation ends with an analysis of the massive 1948 *Wathba* uprising against the revision of the 1930 Anglo-Iraq Treaty. The *Wathba*, successfully prevented the re-imposition of imperialism in Iraq, and would turn into the seed of the July Revolution in 1958. It is situated here within the wider history of decolonization in the Third World to advance a novel methodological approach of the 'conjuncture' to understand anti-colonial and labour agency in relation to international legal history. This study illustrates that undertaking a 'conjunctural analysis' illuminates how the agency of the ordinary peoples of the Third World influenced international legal transformation. The doctrine of semi-peripheral sovereignty and all juridical forms of semi-colonialism would be unequivocally rejected through the Iraqi contribution to the drafting of the 1960 *Declaration on the Granting of Independence to Colonial Countries and Peoples*. This dissertation therefore reveals the unique constitutive relationship between international law, imperialism, and capitalism in the semi-peripheral Middle East, while maintaining the importance of integrating the history of 'class formation', 'agency' and 'labour' into international legal history.

Dedication

*To the People of Iraq
And to the memory of my Bibi,
Zahra Kubba*

Acknowledgements

In the same way that scholars only advance as they stand on the shoulders of giants, this work would have been inconceivable without the help, support and encouragement of so many people.

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List of Abbreviations & Acronyms

BPA	British Petroleum Archive
BPC	Basra Petroleum Company
CID	Criminal Investigation Department
ICP	The Iraqi Communist Party
ILO	International Labour Organization
IPC	Iraq Petroleum Company
MPC	Mosul Petroleum Company
PMC	The Permanent Mandates Commission
TCCDR	Tribal Criminal & Civil Disputes Regulation
TNA	The National Archives of the United Kingdom
TPC	Turkish Petroleum Company
TWAIL	Third World Approaches to International Law



Figure 1: Iraq (Political) map, 2009, USCIA. Perry-Castaneda Library Map Collection
<http://www.lib.utexas.edu/maps/iraq.html>



Figure 2: MPK1-426 Sykes Picot Agreement Map signed 8 May 1916 by Royal Geographical Society: UK.

Introduction

No country could owe more to imperialism than does Iraq.¹

~ Sir John Troutbeck

Mesopotamia as a whole is so rich...yet so defenseless and tempting as to prescribe organized government as the only means of guarding the riches it contains. We must expect therefore to find that Mesopotamia...will impose order and civilization on those who hold it.²

~ Sir Mark Sykes

There are no miracles in nature or history, but every abrupt turn in history, and this applies to every revolution, presents such a wealth of content, unfolds such unexpected and specific combinations of forms of struggle and alignment of forces of the contestants, that to the lay mind there is much that must appear miraculous.³

~ V.I. Lenin

I. The imperial lines of the law & the invisible lines of agency

In a meeting in 10 Downing Street in 1915, the young mid-level British officer and advisor to the War Office, Sir Mark Sykes was asked by the foreign secretary Arthur Balfour what kind of arrangement he envisaged with the French concerning the Arab territories of the Ottoman Empire at the Great War's end. He responded by pointing on a map he had brought with him, 'I should like to draw a line from the "e" in Acre to the last "k" in Kirkuk'.⁴ Herbert Kitchener, the secretary of state, who was present, intervened, 'I think that what Sir Mark Sykes means is that the line will commence at the sea-coast of Haifa'.⁵ In less than twenty years,

¹ The National Archives of the United Kingdom (TNA). FO 371/110991. VQ 1015/82. John Troutbeck (British Embassy, Bagdad) to Anthony Eden (FO, London) December 9, 1954.

² Mark Sykes. *The Caliphs' Last Heritage: A Short History of the Turkish Empire*, (London: Macmillan and Co, 1915), at 8.

³ V.I. Lenin. Letters from Afar, First Letter, "The First Stage of the First Revolution", in *Lenin Collected Works* (Moscow: Progress Publishers, 1964), at 297–308.

⁴ TNA, CAB 24/1, "Meeting held at 10 Downing Street, on Thursday, 16 December at 11:30am, Evidence of Lieutenant-Colonel Sir Mark Sykes, Bart, MP, on the Arab Question," as quoted in James Barr. *A Line in the Sand: The Anglo-French Struggle for the Middle East*, (London: W.W. Norton & Co, 2012), at 7.

⁵ *Ibid.*

analogous lines would demarcate the oil pipelines of the British-owned Iraq Petroleum Company, which originated in Kirkuk, transporting Iraqi oil westward through Syria, Lebanon and Palestine and ending at the ports of the Mediterranean in Haifa and Tripoli. The drawing up of ‘lines’ on maps and the ‘carving up’ of territories by European powers and oil cartels⁶ is a powerful image that is commonly invoked when one thinks of the Middle East. It could be said that the modern history of the geopolitical space known as the ‘Middle East’⁷ is a history of ‘lines’ – straight lines drawn on maps by (white) European hands.⁸ Such a statement would not necessarily be a truism if it did not intentionally disregard other ‘lines’ in the history of the region; *living lines* – the *conjunctural lines of agency*, working-class *movements*, organizational anti-colonial *struggle*, and revolutionary *action*.

This dissertation is an attempt to ‘redraw’ the historical narrative of the region above by examining the history of Iraq in two interconnected ways: first, by emphasizing that the act of imperial line-drawing is a juridical act *par excellence*. The law could be found paralleling these imperial lines drawn on the maps of the region and must therefore be (re) traced in detail. In fact, the underlying claim of this work is that imperialism and semi-colonialism were only able to operate within this space as a result of international and transnational law and juridical arrangements being assembled in certain ways. The law therefore played a significant role in the production of unique geopolitical and economic spaces for imperialism to function in the Middle East. Moreover, international law’s contribution to the formation of the Iraqi state itself had wide repercussions for the entire region.

⁶ Another episode of line drawing on maps is that of the famous ‘Red-Line Agreement’ signed between the partners of the Turkish Petroleum Company on July 31, 1928. The story goes that Calouste Gulbenkian, the famous Armenian philanthropist, ‘took a thick red pencil and drew a line along the boundaries of the now-defunct Turkish empire... Within the red line were eventually to be found all the major oil-producing fields of the Middle East, save for Persia and Kuwait. The partners bound themselves not to engage in any oil operations within that vast territory except in cooperation with the other members of the Turkish Petroleum Company...It set the framework for future Middle Eastern oil development...’ Daniel Yergin. *The Prize: The Epic Quest for Oil, Money and Power*, (New York: Simon & Schuster, 1991), at 204, 205.

⁷ See Michael E. Bonnie, Abbas Amanat, and Michael Ezekiel Gasper (eds). *Is there a Middle East? The Evolution of a Geopolitical Concept*, (Stanford: Stanford University Press, 2012), for a discussion on the evolution of the concept of the Middle East.

⁸ Related to these simplistic historical accounts of the region are those who refer to individual Europeans (such as Mark Sykes, Gertrude Bell or T.E. Lawrence for instance), as having ‘invented’ or ‘made’ the modern Middle East. This is not a merely highly orientalist version of history, but also completely inaccurate in its description of the region as a tabula rasa for European agency, while the local populations are portrayed as completely passive.

Second, this study is essentially an attempt to retrace the *invisible lines* of resistance and struggle in the region (specifically that of Iraq) and to demonstrate that these living lines of revolutionary action, movement agency and their conjunctures played a lasting role on the history of the region, the Third World and ultimately international law itself. This study is therefore one that endeavors to use Iraqi history as a *lens* to understand the role of international, transnational, and imperial law in the region. It is hoped that by situating the history of Iraq in such a manner, one would in turn better grasp how agency could be written into the history of international law.

II. The specificity of the geo-political space of the Middle East & the economic logic of Sykes-Picot

Soon after his visit to London, Sykes met with his French counterpart Georges Picot in secret to negotiate and draft the scandalous Sykes-Picot Agreement (May 1916) between Great Britain and France, which divided the region into spheres of influence.⁹ This document made public by the Bolsheviks in *Izvestia* and *Pravda* soon after they came to power in 1917, included a map, which showed the French portion marked as ‘A’ and the British marked as ‘B’.¹⁰ Although the agreement envisioned the existence of a Confederation of Arab states within its spheres of influence, it was in direct contradiction with British assurances to the Sharif of Mecca, Hussein Bin Ali in the Hussein-McMahon Correspondence (1915-1916), which promised Arab independence in return for the Arabs waging a revolt against the Ottoman Empire.¹¹

The Sykes-Picot Agreement ultimately failed to materialize as envisioned, and the borders of the new states that settled after the war were different and in fact shaped by political compromises and unpredictable post-war changes, such as the rising unformidable Arab nationalism across the region, the discussions at the (more transparent) conferences in Paris (1919), San Remo (1920) and Cairo (1921); and the emergent Turkish state. The discourse surrounding Sykes-Picot, however, is alive and well and continues to creep into the historical narrative of the region, presented as a kind of ‘originary moment’ of imperial intervention in the

⁹ See *The Sykes-Picot Agreement May 1916*, Oxford Public International Law, and Umut Özsu, Sykes-Picot: the treaty that carved up the Middle East, *OUPBLOG* (May, 2016).

¹⁰ See Figure 2. Britain’s sphere of influence included Basra and Baghdad in Mesopotamia, while France included Syria, Southern Anatolia and Mosul. Palestine was designated as an international zone.

¹¹ See Elie Kedourie. *In the Anglo-Arab Labyrinth: the McMahon-Husayn Correspondence and its Interpretations, 1914-1939* (Routledge, 2000).

region and its corresponding post-war state formation.¹² It is especially evoked to further the argument that Iraq and Syria are artificial creations of European powers.¹³ One need not mention how such a (orientalist) narrative of ‘line-drawing’ by Europeans on ‘empty maps’ ultimately takes away from any agency of the local population and erases all traces of resistance. Sara Pursley has already showed how this ‘artificiality thesis’ was a narrative concocted by the British in the 1920s to legitimize their continued control of Iraq, and the reality was that both the Cairo and San Remo conferences were *responses* to nationalist demands by the local inhabitants of Iraq and Syria for independence, expressed in popular uprisings and armed resistance.¹⁴ Iraq therefore, ‘is no more artificial than any other country with borders drawn as a result of a variety of reasons including wars, treaties, compromises, backroom deals, internal and external pressures, and plain chance’.¹⁵

The Sykes-Picot Agreement would be more accurately perceived as one that denotes the *specificity* of the geopolitical space of the Middle East as a whole. It was accordingly not necessarily about the actual carving up and division of the region, but rather about the economic exploitation of the *entire* Middle East. In this way it remains relevant to the subsequent Mandate period in question. Although it was decided that the Mandate system would be the manner by which these territories would be disposed of, making it seem that the nineteenth century imperialist spirit of Sykes-Picot – sanctioning the old practices of annexation, colonial plunder and secret diplomacy– were over. However, as will be shown in this study of Iraq, the *economic* vision of Sykes-Picot continued to permeate deep in the impetus of the Mandate system and *Article 22 of the Covenant of the League of Nations*¹⁶, except that now it was legal, transparent and governed by international law. Karin Loevy has aptly made the point that Sykes-Picot comprised new imperial imaginings of a regional ‘geospace’ of economic development. It evoked, she writes, ‘a powerful imperial image of a region that is opening up for innumerable

¹² Sara Pursley. ‘Lines Drawn on an Empty Map’: Iraq’s Borders and the Legend of the Artificial State’, *Jadaliyya*, June 2 2015.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Thabit Abdullah. *Dictatorship, Imperialism & Chaos: Iraq since 1989*, (London: Zed Books, 2006), at 2.

¹⁶ Article 22 of the Covenant of the League of the Nations was the legal basis of the mandate system: “To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples for a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.”

future possibilities for development and for the management of broad strategic concerns'.¹⁷ These economic concerns were reflected in its provisions that referred to 'free ports', the establishment of norms for free trade, the transfer of water, lines of transportation, railroads...etc.¹⁸

In his introduction to the *American Journal of International Law* Symposium on the centenary of Sykes-Picot, Antony Anghie emphasizes these continuities when he makes the point that inter-imperial arrangements were always concerned with free trade and navigational rights and that therefore this illustrates that, 'questions of governance and sovereignty...were inextricably *linked* in such agreements with trade and commerce'.¹⁹ Edward Said has analyzed Sykes-Picot by reference to its 'peculiar epistemological framework,' one whereby, 'the Orient was seen...as a geographical...entity over whose destiny they [i.e. the European powers] believed themselves to have traditional entitlement'.²⁰ Such ideological frameworks with regards to the Orient and its corresponding economic logic went hand in hand with the 'civilizing mission' of European imperialism in the Third World, and both were re-conceptualized and translated into the language of international law and its new post-war institutions. As this study will show, despite the novel rearrangements occurring in the international legal order at the time, these conceptual frameworks with its economic linkage continued unabated in the semi-periphery. In fact, the same economic preoccupations of free trade that imperial powers were concerned with in The Treaty of Berlin of 1885 and which emanated in the spirit of Sykes-Picot continued in the Mandate system in a very subtle way (especially within the guise of new forms of sovereignty and 'independence') and it is these legal intricacies that this study of Iraq is concerned with.

III. Four underlying interventions & arguments

There are four major interventions and arguments that run throughout this work. The first is that critical international legal scholars of the Third World have overlooked the semi-periphery

¹⁷Karin Loevy. 'The Sykes-Picot Agreement's Regional Moment: Drawing Lines of Development in a New and Open Space' Symposium on the Many Lives and Legacies of Sykes-Picot, *AJIL Unbound*, Vol.110, 2016, at 122.

¹⁸ *Ibid.*

¹⁹Antony Anghie. 'Introduction to Symposium on the Many Lives and Legacies of Sykes-Picot', September 28, 2016, *AJIL Unbound*, <https://www.asil.org/blogs/introduction-symposium-many-lives-and-legacies-sykes-picot> at 106, emphasis added.

²⁰ Edward Said. *Orientalism*. (NY: Vintage, 1978), at 221.

and its significance in the history of international law and its institutions.²¹ In other words, the literature has for the most part maintained a strict dichotomy between the periphery and the core, while the semi-periphery, which has a unique history, has been ignored. It is only by exploring the semi-periphery in historical detail that its specificity becomes clear and the operations of international law in the Middle East can be understood.²² The analytic ambiguity associated with the region demonstrates how the law – i.e. a combination of international, transnational and imperial law – operated in a manner that obscured reality. The imperial powers, through the Permanent Mandates Commission (PMC) in Geneva, experimented with the concept of sovereignty in Iraq. This was meant to allow for the making of a unique form of ‘semi-peripheral sovereignty’ in international law for the region that would be compatible with the economic exploitation not only of Iraq, but the entire semi-peripheral Middle East. Iraqi oil being the jewel in the crown of the Middle East could only be exploited in this manner. In this sense, a focus on the spatial and geopolitical characteristics of the semi-periphery makes it easier to understand why it was that from an imperial viewpoint, necessary to designate the ‘A’ Mandates, where ‘independence’ was provisionally recognized, as such.

The semi-periphery was a laboratory for legal experimentation with the concept of sovereignty with the hope that the advent of independence in the region, as upheld by the new post-war international legal order based on Wilsonian notions of self-determination, would still license imperialism through the uninterrupted flow of capital and oil extraction, ensuring its continued operation in a subtle but legitimate manner. International law was therefore deployed in the region for specific geopolitical purposes, in particular the maintenance of European influence, imperial control and access to oil. Iraq was at the heart of this experiment. It would ultimately become the only mandated territory that would be proclaimed as independent under the Mandate process of international law. Of course, as this study will show, this ‘independence’ was a sham – a mere figment that was maintained through the law. Only a deep historical analysis of the law in the semi-periphery, and in Iraq in particular, can reveal how this figment was maintained, its exploitative effects on the peoples of the region, and its implications for international law.

²¹ Antony Anghie for instance relies on a dichotomy of the periphery and the centre in his history of international law without any reference to the semi-periphery at all. Antony Anghie. *Imperialism, Sovereignty and the Making of International Law*, (Cambridge: Cambridge University Press, 2004), at 314.

²² The literature on the role of the semi-periphery in international legal history has only just begun to emerge: See Umut Öszu, *Formalizing Displacement: International Law and Population Transfers* (New York: Oxford University Press, 2015); Arnulf Becker Lorca. *Mestizo International Law*, (Cambridge: Cambridge University Press, 2014); Mai Taha. *Nation and Class Subjectivity in International Law and its Institutions in the Middle East (1919-1939)*, SJD Dissertation, University of Toronto, 2015.

The second argument of this study is that the history of international law must be analyzed from a materialist perspective if one intends to uncover its connections with capitalism.²³ Luis Eslava and Sundhja Pahuja have emphasized the need for a new methodological turn towards an understanding of how international law operates in everyday life. The point in this study is not merely to do this, but in addition to grasp its interconnected role in the capitalist mode of production affecting the material lives of the peoples of the Third World. It is for this reason necessary to incorporate the category and lens of class and its formation in this analysis. This study is consequently a critique of the ‘cultural turn’ within critical international legal scholarship, which mirrors the turn taken by scholars of subaltern studies in particular and late post-colonialism in general.²⁴ The materiality of international law emphasizes the manner by which the peoples of the Third World were directly affected by the imperialism embedded in international law and its institutions. It connects international law to the everyday lives of the colonized. It emphasizes how international law and its institutions in the semi-periphery contributed not only to state formation, but to the capitalist modes of production, which in turn structured class formation.²⁵

Consequently by inserting class as an analytic lens to understand the materiality of international law, this study will elucidate *how* the unique capitalist *spaces* of production that were produced by international law, its institutions and instruments in Iraq (the Mandate, the Anglo-Iraq treaties, and the doctrines of sovereignty) violently impacted the Iraqi working class. These workers would eventually unite and organize to fight against these constraints and the violent effects of international law that they experienced directly in their workplaces and everyday lives. My focus on labour as a site of agency is used here for several reasons, one of which is that the Iraqi worker, similar to his counterparts in the region, at the specific conjuncture of (early) decolonization and within these colonial and semi-colonial spaces allowed him or her to experience the violent contradictions of capitalism, semi-colonialism and imperialism from a

²³ Luis Eslava and Sundhja Pahuja. “Beyond the (Post)Colonial: TWAIL and the Everyday Life of International Law”, *Journal of Law and Politics in Africa, Asia and Latin America - Verfassung und Recht in Übersee (VRÜ)*, Vol. 45(2), 2012, at 195-221.

²⁴ See Nathaniel Berman. *Passion and Ambivalence: Colonialism, Nationalism, and International Law* (Leiden: Martinus Nijhoff Publishers, 2011), at 404; Martii Koskeniemi. *From Apology to Utopia: The Structure of International Legal Argument* (New York: Cambridge University Press, 2006), at 7, 12.

²⁵ A materialist understanding of international law has been undertaken by several critical international legal scholars, the most prominent being China Mieville and his reinterpretation of the work of Bolshevik legal theorist Evgeny Pashukanis. China Mieville. *Between Equal Rights: A Marxist Theory of International Law*, (Chicago: Haymarket Books, 2006).

unique location.²⁶ This consequently gave the worker a unique vantage point for struggle, allowing him or her to connect his or her material conditions to imperialism. Tracing agency through the question of labour therefore allows this study not to lose track of how agency moved from these confined spaces of capitalist production to the wider spaces of anti-colonial nationalist struggle, which were in turn transformed into a total rejection of the international legal order that was imposed on Iraq. Hence, the imperialism and semi-colonialism of international law in Iraq *did* have material effects on certain classes more than others, and scholars would be amiss to ignore this fact. Putting it differently, the sovereignty granted to Iraq by international law, was a (limited) sovereignty granted to a specific class. A focus on labour (and class analysis), then, would clarify the constitutive connection between international law, imperialism, and capitalism in a more grounded way.

Considering that this study is not only an international legal history of Iraq, but also a labour history of Iraq (as it aims to connect the histories of agency of labour and anti-colonial struggle to international legal history), it is not surprising that the second argument above is not only aimed at international legal scholars who emphasize culture over social relations, but is also a response to the principal arguments of the Subaltern Studies historians²⁷ in their analyses of labour in the history of India and Eastern societies in general. The history of the Iraqi working class as presented in this study will demonstrate the continuing relevance of the concept of ‘class’ and will show that despite their tribal and peasant backgrounds, Iraqi workers formed (at certain critical conjunctures) a unique class-consciousness and bonds of class solidarity in waging their struggles against semi-colonization and imperialism. The subaltern approach, which discards Marxist categories (such as class), and prefers a post-structuralist –cultural – notion of *difference* (through its category of ‘the subaltern’) will be seen to be quite unsuitable for understanding the history of Iraq and the Middle East. For culture *on its own* should never be the underpinnings of any understanding of Iraqi (or Eastern) society.

²⁶ Here I am referring to a narrow section of the Iraqi working-class, which is still a minority – the more advanced sections of the working-class, who worked in the colossal industrial enterprises, which were foreign-owned and administered. These were the most ‘proletarianized’ sections of the working-class and are the focus of this study: the oil, port and railways workers. The point is that at these strategic locations capitalism, semi-colonialism, and international law had a clearer manifestation.

²⁷The initial Subaltern group came together in the 1970s and consisted of Partha Chatterjee, David Hardiman, Gyanendra Pandey, Sumit Sarkar, and Dipesh Chakrabarty. For good summaries of the group’s history see: Ranajit Guha, “Introduction,” *Selected Subaltern Studies* (New York: Oxford University Press, 1988); Dipesh Chakrabarty, “Subaltern Studies and Postcolonial Historiography,” *Nepantla: Views from South* 1:1 (2000), 9-32; David Ludden, “A Brief History of Subalternity,” in Ludden, ed., *Reading Subaltern Studies* (London: Anthem Press, 2002), 1-39.

The third underlying argument is that the imperialism and semi-colonialism of international and transnational law in the semi-periphery would be better grasped by emphasizing the significance of its spatiality, especially considering that the semi-periphery has continuously been viewed as a highly geo-strategic location for imperial powers in the first place.²⁸ Iraq's uniquely strategic location was one reason for the emergence of certain capitalist spaces and enclaves that were essentially severed from the governing capacity of the Iraqi state. It was in a way the existence of these spaces that characterized the (constricted) Iraqi semi-peripheral sovereignty, which emerged out of the Mandate process. This study will not only explore these spaces – namely the oil fields of Kirkuk, the railway workshops of Baghdad and the port of Basra – in micro-histories, but also most significantly detail how Iraqi workers were affected by these imperial and semi-colonial spaces, and in turn organized against them, at times producing their own counter-hegemonic spaces. This argument of course relies on those scholars who have developed economic analyses of space (and time) under capitalism, and who have maintained that space is a social construct that must be taken seriously by disciplines other than geography.²⁹

The point here, however, is to maintain the interconnection between international law, capitalism, space and the human workers materially affected by these processes. As Tayyab Mahmud has clarified in his work on indenture labour, '...international law [is] unavoidably entangled with hierarchal positionings of bodies and spaces by global operations of capitalism.'³⁰ It is however the specificity of the semi-peripheral Middle East that is most interesting to this study as the region was itself a spatial construct, as we have seen above with the framework used to draft Sykes-Picot with its underlying economic logic. It is therefore the semi-periphery's

²⁸ The connection between geography and imperialism must be made as well. It not merely the drawing of lines that characterizes an imperialist action, but so is the production of maps. As Morag Bell, Robin Butlin and Michael Heffernan have written, 'the principal geographic tool was the map. By representing the huge complexity of a particular physical and human landscape cartographically in a single image, geographers provided the European imperial project with arguably its most potent device.' Morag Bell, Robin Butlin and Michael Heffernan (eds.). *Geography and Imperialism 1820-1940*, (Manchester: Manchester University Press, 1994), at 4.

²⁹ See David Harvey. *The Limits of Capital*, (London: Verso, 1999); Harvey. *Spaces of Global Capitalism: A Theory of Uneven Geographical Development* (London: Verso, 2006), and Henri Lefebvre. *The Production of Space*, (London: Blackwell, 1978). Harvey spatializes Marx and demonstrates how space is produced by and also shaped by capitalism. For an overall analysis of his work see, Eric Sheppard. "David Harvey and Dialectical SpaceTime", in Noel Castree and Derek Gregory (eds), *David Harvey: A Critical Reader*, (New York: Blackwell, 2006).

³⁰ Tayyab Mahmud. "Cheaper than a Slave: Indenture Labor, Colonialism, and Capitalism", *Whittier Law Review*, (2013), Vol. 34.2, 215-243, at 216.

unique spatiality that is what makes it vital for imperialism.³¹ It would only make sense then that the corresponding juridical structures of international and transitional law that penetrated the region, which is the concern of this study, would also approach it and manifest in such a spatial manner. As will be shown, Iraqi (labour and anti-colonial) agency had to consequently use this spatiality strategically in their organized struggles against imperialism and this is quite revealing.

Finally, the fourth and most central argument underlying this work is concerned with the question of agency in international legal history. In other words, it is an attempt to answer the following question: how could one write the history of the agency of the ordinary peoples of the Third World into that of international law? It will be argued that a methodological approach borrowed from Marxist theory of the international conjuncture needs to be inserted into critical legal scholarship, so as to properly assess the question of agency in relation to international legal transformation. This approach takes the ‘conjuncture’ as the starting point of any analysis of agency, emphasizing that acts of resistance, especially revolutionary action, are contingent to the international legal structures in question. The concept of the conjuncture refers to the potentialities of action in the historical arena and it analyzes agency in relation to the structures in question rather than in isolation from them. The point is that at certain conjunctures in history, the specific alignment of political (domestic and international) forces and structures brings about counter-hegemonic spaces where action becomes possible and where agency is more conducive to historical transformation and development. Action and agency have more effect on historical transformation in these cases. By making the correct connections, agency would be analyzed in relation to these (historical) conjunctures and grasped more fully, while keeping the present conjuncture in mind.

The argument here is a response to how some streams of Third World Approaches to International Law (TWAIL) scholarship have theorized agency in their work by romanticizing the plurality of law, its spontaneity and its non-violence. It is moreover a manifestation of the ‘cultural turn’ mentioned earlier. TWAIL analyses of anti-colonial agency or their preferred notion of ‘resistance,’ discards revolutionary action, which has generally been violent, organized and party-oriented. Such sanitization of the history of revolutionary agency also completely ignores the fact that not every action is effective as it depends on its contingent relation to the structure in question. It assumes that in the creative and cultural uses of law, movements could

³¹ Such as its significance in air communications, as a centre between East and West, the ‘route’ to India, and of course its oil deposits.

wage an effective struggle against imperialism and its manifestations in international law, at anytime. This study of Iraqi labour agency, however, shows how structure and agency are in fact interconnected, and so one must understand how a conjuncture containing revolutionary potential of a counter-hegemonic space emerged in the first place – a conjuncture that allows a movement room to wage an effective and organized struggle. To do this, a wider international perspective of agency and action is needed, situating it more broadly in opposition to the (international, legal and natural) unity of imperialism to understand why it is that targeting *one* location on the imperial map at a certain *time* is effective, while another is not.

IV. Chapters' overview

It is now appropriate to briefly outline the chapters of this study. Chapter 1 begins in rural Iraq and describes how a system of semi-feudal capitalist production was established and structured through the operations of British administrative techniques and imperial law. The chapter looks at two interrelated narratives: the British invention of tribal customary law, and the land tenure system that entrenched capitalist relations in Iraq. It illustrates how the British imported certain legal colonial administrative techniques from their experience in India (and elsewhere in the Empire) to secure their imperial interests and bolster the semi-colonial Iraqi state. This created a fragmented positivist duality in Iraqi law, as the British institutionalized a separate tribal legal system that was removed from the jurisdiction of the state. It will be shown how this fragmentation in law served British interests and the Iraqi ruling class through the consolidation of the semi-colonial Iraqi state. The second part of the chapter explores how capitalist (semi-feudal) relations were established in Iraq through the British land policy and corresponding legislation, which concentrated land into a small number of landowners, transforming selected sheikhs into landlords, while their tribesmen became peasants and later bonded serfs, and would ultimately flee to the cities to become wage earners. The main argument of this chapter is therefore that the law played a significant role in capitalist transformation and the structuring of underdevelopment in Iraq.

Chapter 2 moves to the city of Baghdad to explore the early history of the labour movement, in particular the first such organization: the *Jam 'īyat aṣḥāb al-ṣinā'a*. The purpose of the chapter is to contextualize the history of the Labour Law of 1936, arguing that it was passed by the Iraqi state partly as a concession to pacify the working class and its movement due to their first experiments in strike action in 1930 and 1931. It will be shown that despite the fact that the

Labour Law was to become merely black ink on paper, not to be applied for the next twenty-two years until after revolution, both the early and later communist-led labour movement would appropriate its language and use it as a reference point in making their demands in nearly every strike to come. The main argument here is that the law – even a dead law of a semi-colonial state – was a useful (but limited) tool to advance a counter-hegemonic struggle as it provided a language for the workers to advance their demands.

Chapter 3 details the role of international law in the formation of the Iraqi state and the making of a unique Iraqi sovereignty out of the Mandate process in Geneva – what I call ‘semi-peripheral sovereignty’, which I define as a sovereignty that is constructed for geopolitical purposes pertaining to the semi-peripheral region of the Middle East, in particular its economic exploitation and especially to (legally) extract and transport Iraqi oil to the Mediterranean. The chapter begins by exploring the principles behind the Mandate system, moving to an examination of the significance of the ‘A’ mandates. It then attempts to explain how British legal practices, such as treaty-making, were used to reconcile certain aspects of international law, constructing Iraqi independence and its sovereignty in 1932 through the ratification of the 1930 Anglo-Iraq Treaty – which was to become the legal manifestation of imperialism in Iraq throughout the Hashemite period.

The central argument of this chapter is that only by tracing the economic dimensions of this semi-peripheral sovereignty could one grasp its relevance for the region. To do this, I analyze how the members of the Permanent Mandates Commission (PMC) in Geneva, who were making international law in their sessions, reached the conclusion that Iraq was ready for independence. I explore the contradictions in their reasoning, especially concerning the economic principle of economic equality, also known as the ‘open door,’ which was meant to prevent monopolization and exploitation. The Iraqi oil concessions, however, were intentionally differentiated and separated from the discussion of political sovereignty. It will be shown that the economic aspects of Iraqi sovereignty and its effects on the region are to be found in the PMC’s deliberations on the oil pipeline agreements that dealt with the effects of the oil pipelines on the mandates of Palestine and Syria. These discussions contained further contradictory logic in that the open door principle was circumvented as oil was allotted exceptional status under international law. This legal reasoning was necessary to legitimate the operations of imperialism in the region.

Chapter 3 then shows how the pipeline agreements were intimately connected to the Iraqi oil concession, and in turn, how the oil concession was intimately linked to Iraqi semi-peripheral sovereignty. Iraqi semi-peripheral sovereignty would be accepted as a part of international law until the unremitting struggle waged by the Iraqi people (first manifested in the 1948 *Wathba* uprising) broke its fetters after the 1958 July Revolution, leading to the unequivocal rejection of this legal figment on the international stage through the Iraqi contribution to the drafting of the 1960 *Declaration on the Granting of Independence to Colonial Countries and Peoples*.

Chapters 4 and 5 are mini-histories that describe the spaces that were intrinsically linked to capitalism and its modes of production, and depict the conditions of the workers who lived and worked there. These imperial and semi-colonial enclaves were central to the operations of capitalism and imperialism in Iraq: the oil fields of Kirkuk, the Iraq State Railways concentrated in the Schālchīyyah workshops in Baghdad, and the port of Basra. I will begin with a description of the legal structures that governed these spaces – through the 1930 Anglo-Iraq Treaty and the oil concession– which detached them from the Iraqi state. The oil fields were governed by the British-owned Iraq Petroleum Company (IPC) under a concessionary agreement. The company was allotted wide discretionary powers to manage the space of the oil fields that it had significant economic impact on the city of Kirkuk and its surroundings as a whole. The railways and the port were semi-autonomous enclaves governed by British administrators. These chapters are therefore meant to show how international law, transnational law and imperial law produced these spaces and how they directly affected the lives of Iraqi workers, while describing how labour agency operated to free the workers from its socio-economic constraints.

Chapter 4 describes the miserable conditions of the workers of the oil fields, where colonial relations were maintained even after independence. I go on to describe how the workers united to form a trade union with the guidance of the Iraqi Communist Party and organized massive strikes against the company in 1946 (centered around the Gāwūrbāghī gardens) and later in the K3 pumping station in 1948. I show how these strikes were violently crushed through the complicity of the company, the British Embassy and the Iraqi state. I argue that the legal arrangements at the intersection of the concession and semi-peripheral sovereignty permitted the company, British officials and local police to collude to use violence against the workers in Gāwūrbāghī. Iraqi law and justice were unable to penetrate the imperial concessionary space governed by the oil company to hold anyone accountable for the cold-blooded murder of workers. The chapter ends with a detailed analysis of the K3-pumping station strike (a major part of the

Wathba uprising), whereby the workers used spatiality as strategy, disrupting the oil pipelines on the imperial map of oil extraction to assert their material demands.

Chapter 5 details the struggle of the railway and port workers to improve their conditions and challenge the legal structures of semi-colonialism that governed their workplaces. This chapter illustrates the organizational strategies and tactics used by these workers in forming independent trade unions to struggle against semi-colonial legality and for the implementation of the labour law, waging organized strike actions in 1945, 1946 and 1948. I show how the Iraqi state through the advice of British labour experts responded to these strikes by undermining the workers' efforts, but also by promoting certain social and labour reforms (such as replacing their independent trade unions with workers' committees) with the aim of upholding British semi-colonial hegemony rather than allow for real structural change. The British labour experts' views of workers and trade unionism in Iraq will be explored through a detailed analysis of British labour reports. The chapter argues that workers used the law inventively as a rhetorical and strategic tool against the semi-colonial order, while British experts devised legal reforms as a way to undercut any real structural change in Iraqi society.

Chapter 6 is an examination of the violence underlying semi-peripheral sovereignty. It details how the Iraqi state used criminal law, martial law and the doctrine of emergency to crush any form of dissent. After delving into the historical origins of the doctrine of emergency, the chapter argues that the Iraqi state used this colonial method to institute a de facto permanent state of emergency after the 1952 *Intifāda*, and maintain its hegemony and the semi-colonial order. It was to become a technique of semi-colonial governance in Iraq. The doctrine of emergency was ingrained into the institutions of the Iraqi state and the constitution itself. Furthermore, draconian criminal legislation, such as the amendment to the Baghdad Penal Code of 1938, was analogously used to suppress any form of dissent or any call for change. The military courts relied on the 1938 amendment to imprison thousands of protestors and strikers, while communist leaders were executed after the *Wathba* uprising. This history of repression and the role of law in it will be recounted. The chapter ends with the debates in and out of parliament, especially focusing on the work of the renowned Iraqi legal scholar Hussein Jamīl revealing the limitations of his social democratic liberalism. The point here is not only to show that semi-peripheral sovereignty and the doctrine of emergency were two sides of the same coin, but also to emphasize that it was only by defeating the entire semi-colonial order that the state of emergency finally ended and not through the safeguarding of the rule of law per se.

Finally, Chapter 7 is a recounting of the massive 1948 *Wathba* uprising, initiated by workers and students and encompassing a wide stratum of Iraqi society, who came out to the streets of Baghdad to protest the imposition of a revised treaty between Iraq and Britain. The proposed revision of the 1930 Anglo-Iraq Treaty was meant to redefine the semi-colonial Iraqi order to make it consistent with the newly emerging international order and the UN Charter. However, the provisions of the revised Portsmouth Treaty in fact entrenched Iraq further into imperialist control. This chapter is concerned with understanding how agency could be analyzed and written into international legal history through a close analysis of the *Wathba* uprising. After assessing the contents of the Treaty, the narrative moves to the streets to explain how workers and students organized and just over three weeks successfully prevented the imposition of this treaty before the uprising was violently crushed.

The central argument of this chapter is that the *Wathba* was a manifestation of a conjuncture against the imperialism of international law. As mentioned earlier the argument will be presented within the historical context of the *Wathba* to emphasize that critical international legal scholars, especially TWAIL scholars, must undertake conjunctural analyses to grasp how agency plays a role in international legal transformation. The *Wathba* is situated into the wider history of decolonization in the Third World. The argument in this chapter therefore brings the entire historical narrative of this study together. The oil, port and railway workers utilized their previous experiences in strike action and sabotage within their confined workplaces for a wider anti-colonial struggle. Organized people's coordination committees sprang up. The workers' consciousness of the connection between their material conditions and imperialism was conveyed by the Iraqi masses during the *Wathba*, who displayed a clear understanding of how imperialism functions through law and how law obscures reality.

Through their very actions, the Iraqi urban poor, students and peasants rejected the entire semi-colonial order, in particular the doctrine of semi-peripheral sovereignty, denoting their demand to control their own destinies. The *Wathba* would become the seed of the July Revolution of 1958, as every uprising after it would call for its renewal until the revolutionary overthrow of the semi-colonial order by the Free Officers a decade later.

V. A note on sources & the limits of writing a legal & labour history of the Middle East

It should be mentioned that this historical work was the product of the painstaking weaving together of the fragmented sources on Iraq. In other words, it was the best that could be done considering the circumstances and so a lot of questions remain due to the problem of the fragmentation and unavailability of sources on the region. The extensive archival research that was conducted for this international legal and labour history of Iraq include the following: British records from the National Archives at Kew; the company records of the Iraq Petroleum Company located in the BP Archive at Warwick University's Modern Records Centre in Coventry; the reports of the Permanent Mandates Commission of the League of Nations; and the *Muḥātharāt Majlis al-Nūwwāb* (Iraqi parliamentary records) held at the Nami Yafet Memorial Library of the American University of Beirut in Lebanon. Despite visiting other archives, such as the ILO Archives in Geneva and the US National Archives in Maryland, I did not end up using these records for various reasons. A future book project would certainly refer to these sources to paint a more complete picture. To reconstruct Iraqi labour history, I relied on a variety of sources, in particular memoirs of communist, nationalist and labour leaders; working class, nationalist and communist newspapers (especially the communist *al-Qā'ida* and the social democratic *Ṣawt al-Aḥālī*); communist pamphlets; Iraqi Marxist journals, such as the cultural ICP journal, *al-Thaqāfa al-Jadīda* ('The New Culture') held at Yale University Library; and selected records from the British Communist Party Archives, amongst others.

It is unfortunate that I was unable to go to Baghdad to delve into the Iraqi National Archives, due to the security situation and the difficulty of getting access in the first place. The possibility of conducting oral interviews was also regrettably grim, since a significant number of the participants in the labour and communist movements of the period (if not executed by the Ba'ath party in 1963) have either long passed or were unable to meet for health reasons. I did, however, get a chance to briefly correspond with several old Iraqi communists, including, Ara' Khājādwī, 'Azīz Sbāhī, and Ghānim Ḥamdūn. They have all since passed. I am ever so grateful for their input and generous guidance.

Turning from the historiography of international law to that of labour, it has been said that 'it is nearly impossible' to find the necessary primary sources to build a labour history of

Iraq.³² Although it has certainly been quite difficult to write this history, I do not think that the mere fragmentation of the primary sources should prevent scholars from at least attempting to weave together a labour history of the region. Although this study is not a classic labour study, its focus on international law and its institutions allows Iraqi labour history to be situated in a novel way. Such a methodological shift in the study of labour could be argued to be in itself an original contribution to the overall literature and labour historiography of the Middle East. Still, I hope that I have contributed in some small way in weaving together a historical study of labour in Iraq for future generations of Middle East scholars to build on.

³² Kevin M. Jones. "Unmaking the Middle Eastern working classes: labour and the politics of historiography", *Social History*, 2015, Vol. 40, No. 2, 145-156; at 150

Chapter 1: The Semi-Colonial Uses of Positivist Duality in Law or How Law Underdeveloped Iraq

[I]n Iraq the rule of law was the rule of two laws...one... for an ordinary civilized nation...the other for armed savages given up... to the barbaric concepts of honour.³³

~ Caractacus

We have a bizarre law...called the *Tribal Criminal and Civil Disputes Regulation* ... created by the occupiers... for the purpose [of furthering] the politics of occupation...³⁵

~ Maki Jamil

Oh Planter of fruit, full of hope for reward
Abandon your effort for its fruit is sadness
Uproot it, for the delicious fruit is forbidden
For the planter and permissible only for the strong.³⁷

~ Ahmad al-Safi al-Najafi

I. Introduction

The purpose of this chapter is to analyze the role of the law in the underdevelopment of Iraq. How was a system of 'semi-feudal' capitalist production established in modern Iraq?³⁹ The history of Iraq and its colonization has generally been approached under the guise of different broad economic theories, while the role of law in the narrative has been marginalized or entirely

³³ Caractacus [pseudonym of Norman Daniel]. *Revolution in Iraq: An Essay in Comparative Public Opinion* (London: Gollancz, 1959), at 37.

³⁵ Makī Jamīl. *T' līqāt ' la Nithām Dī' āwy al-'shā' ir wa T' dīlātahu* [A commentary on the Tribal Criminal and Civil Disputes Regulation and its amendments], (Baghdād: Matba' a al-Karakh, 1935), at 120-121.

³⁷ Ahmad al-Sāfi al-Najafī, *al-Amwāj* (Bayrūt: Dar al-'Ilm li al-Malayīn, 1961), 8-13.

³⁹ The concept of 'semi-feudalism' is used in this study merely to illustrate that certain characteristics that are not generally compatible with the capitalist mode of production (such as unfree labour relations) could still exist in harmony with capitalism. It is therefore not meant to suggest that Iraq was in 'transitory' state of pre-capitalism that was disrupted by semi-feudalism. On the contrary, the concept of 'semi-feudalism' in Iraq suggests that capitalism *could exist* as such with certain contradictory forms of 'semi-feudalism'. As Jairus Banaji has argued, '...there might be historical situations where in the absence of a specifically capitalist mode of production on the national scale, capitalist relations of exploitation may nonetheless be widespread and dominant.' J. Banaji, "Capitalist Domination and the Small Peasantry: The Deccan Districts in the Late Nineteenth Century", in *Theory As History: Essays on Modes of Production and Exploitation*, (Chicago: Haymarket, 2010), at 282. For an extensive critique of the concept of 'semi-feudalism' and its corresponding thesis and an overview of the literature see, Tom Brass. "Rural Labour in Agrarian Transitions: The Semi-Feudal Thesis Revisited" *Journal of Contemporary Asia*, Vol. 32, No. 4 (2002), 456-473.

ignored. The law however was a crucial instrument in the structuring and instituting of the economic, social and power relations that emerged to constitute the modern Iraqi state. The underlying claim here is therefore to emphasize that the law is not merely a ‘superstructure’ that should not be taken as seriously as the economic ‘base,’ to use one Marxist terminology. Although I am not claiming that law determined these economic relations, I am suggesting that it played an essential role in the overall process that tends to be overlooked. My argument concerning the law in the colonies (or more particularly the semi-colonies) will be made in the context of two interrelated historical narratives in Iraq: the British tribal policy and the invention of customary law on the one hand, and the land tenure system on the other. The British and the Iraqi state used the law and certain administrative techniques to impose a (so-called) modern ‘semi-feudal’ system, which was advantageous to and served British imperial interests and the capitalist world economy in general. This process led to a significant rearrangement of the socio-economic structures of Iraqi society, as well as its tribal composition. Traditional property relations were significantly altered, while the invention of customary law through the institutionalization of a separate tribal legal system ensured the transformation of the social and power relations of the tribes in Iraq, and the entrenchment of capitalism in the region.

II. The ‘invention’ of the customary law of the tribes of Iraq

The tribes of Mesopotamia have been the source of romantic fascination of many a European traveler at least since the nineteenth century. It was no doubt the orientalist views chronicled by these travellers of the bedouin that influenced the formation of tribal policy when the British found themselves in control of this region in 1916-1917. Furthermore, the British had to improvise in circumstances of limited financial assistance from London, while considering the military weakness of the new Iraqi state that was run by a small number of *ex-Sharifian*⁴⁰ officers with the newly selected King Faisal in Baghdad.⁴¹ The British administration and later the Iraqi state had no real control over its rural areas, which made up the majority of the country - its borders and frontiers controlled by various heavily armed tribes. This multitude of nomadic and

⁴⁰ The *ex-Sharifian* Officers were those officers who participated in the Arab Revolt against the Ottoman Empire during World War I (1916-1918) and were led by the Sharif Husayn ibn ‘Ali. They would later play a prominent role in the establishment of the Iraqi state. A ‘Sharif’ is one who claims descentance from the Prophet Mohammad and holds a position in society on this basis. The term commonly used in Iraq is ‘Sayyid’.

⁴¹ Hanna Batatu. *The Old Social Classes and the Revolutionary Movements of Iraq: A Study of Iraq’s Old Landed and Commercial Classes and of its Communists, Ba’thists and Free Officers*, (London: Saqi, 2004), at 88.

semi-nomadic tribal sections and confederations, which previously had an almost fluid character in that they had been in constant movement throughout their existence, needed to be brought under the purview of British administrative control and eventually Iraqi state control in an efficient but inexpensive manner. As will be shown, this was done through several approaches and strategies whereby the law eventually played a significant role. Although it is important to realize that the ‘tribes’ were not homogenous in any way, but rather made up of a diverse nomadic, semi-nomadic and settled groups that lived in differing topologies and environments – whether it was from Kūt and ‘Amārah on the Tigris river to Muntafiq, or Dīwānīyah and Hillah in the central and lower Euphrates. In that sense, one must avoid essentializing the ‘tribe’ qua tribe as they were too diverse. So, although it would be wiser to study the specificity of a particular tribe in question before making any wide generalizations, it is still necessary to make some useful general observations about tribal organization for the sake of analytic argument, while recognizing their heterogeneity and avoiding essentialism.⁴²

Samira Haj has argued that the very dichotomy between the urban townsmen and rural tribesmen that is so prevalent in Iraqi historiography was in itself an essentialism that is misleading as the two have always overlapped and interacted throughout their existence.⁴³ In fact, the tension between tribal and state organization was much more intricate and dynamic than is generally perceived; this has previously been understood by Ibn Khaldūn⁴⁴ who emphasized the cyclical character of early Islamic history, whereby tribalization and settlement were processes in constant alternation and flux.⁴⁵ As Richard Tapper has explained, (centralized) ‘government control is clearly an important determinant of tribal political organization, but it is not simply an external force; its impact depends on how it is internalized by the tribespeople and how they react to it.’⁴⁶ The tribe may for example internalize certain aspects of state centralization – ‘elements of

⁴² Samira Haj, *The Making of Iraq 1900-1963*, (New York: SUNY Press, 1997), at 13.

⁴³ See Samira Haj. “The problems of tribalism: the case of nineteenth-century Iraqi history,” *Social History*, (1991) Vol. 16: No. 1, pp.45-58.

⁴⁴ Ibn Khaldūn, ‘Abd al-Rahmān ibn Muhammad (d.1406). An influential Arab historian, historiographer, and social philosopher. He held numerous public positions in Tunis, and moved to Cairo in 1392, where he taught and served as a judge until his death. His major work is the *Muqaddimah (Introduction to history)*, which traces his thoughts on sedentary and desert populations, dynasties, and the caliphate. In the *Muqaddimah*, Ibn Khaldūn stated that he had established a new science, ‘ilm al-‘umran (the science of social organization); he is accordingly regarded as the father of sociology. See *Oxford Dictionary of Islam*.

⁴⁵ See Saleh Haider, “Land Problems of Iraq”, (Unpublished PhD Thesis, University of London, 1942), at 22.

⁴⁶ Richard Tapper, “Anthropologists, Historians, and Tribespeople on Tribe and State Formation in the Middle East,” in Philip Khoury and Joseph Kostiner (eds.), *Tribes and State Formation in the Middle East* (Berkeley: University of California Press, 1990), at 67

state could be found within every tribe' and vice versa.⁴⁷ This as we shall see was precisely what happened with the tribal policy that was institutionalized by the British administration. Ironically, despite its intention of 'preserving' customary law and tribal tradition, this British policy turned out to have somewhat invented something unique instead through the construction of a separate tribal legal system that was sanctioned by the state and its institutions.

Before embarking on a detailed analysis of the British tribal policy and its implications, it is necessary to briefly explain the character of tribal organization – its basic structures and institutions. The tribe, as the only socially organized unit in the desert and rural countryside, functioned as a necessary safeguard for the nomad-tribesmen and the settled cultivator-peasant alike. This was generally the case before the Ottomans attempted to strengthen the central government based in the cities, intentionally breaking down the power of the tribes and their cohesion in the late nineteenth century. Generally, under the tribal system the tribe held land communally and although the Shaikh divided parts of the tribal land provisionally among the families of the tribe, private ownership was *not* absolute.⁴⁸ The division of land was done according to certain principles and criteria that ensured that the land would always remain within the tribal *dīrah*.⁴⁹ Therefore, despite the existence of certain forms of private property, depending on the shaikh's (provisional and rotating) assignment of land, and although the tribesman's attachment to his tribal *dīrah* was strong enough that he was willing to die to defend it, he lacked any sense of *individual* ownership of any *particular* plot of land in the *dīrah*.⁵⁰ It is in this way that the idea of absolute private property, including profit was alien to the tribe.⁵¹ I will return to the complicated question of land in more detail in the second part of this chapter.

An important point that needs to be emphasized early on is that the migration of tribes from Northern Central Arabia (Najd) or present-day Saudi Arabia eastward or southward into Iraq and the coastal Arabian Gulf was a relatively recent phenomenon that could be traced to the late seventeenth and eighteenth centuries. As Hala Fattah has shown, certain clans and tribes

⁴⁷*Ibid*, at 68.

⁴⁸Haider, *supra*, ft. 45, at 88.

⁴⁹Doreen Warriner. *Land and Poverty in the Middle East*, (1948) (London: Royal Institute of International Affairs), at 18. The *dīrah* was an area of land which was 'habitually occupied' by the tribe or which was 'its preserve' as long as it could militarily defend it.

⁵⁰Haider, *supra*, ft.45, at 316. Batatu, *supra*, ft. 41, at 71. As Paul Dresch writes, "The tribal term *dīra*, in keeping with its Bedouin origins, conveyed more of a sense of the domain over which the tribe exercised sovereign rights rather than exclusive ownership"; Paul Dresch, *Tribes, History and Government in Yemen* (Oxford: Clarendon Press. 1989), at 343.

⁵¹Batatu, *supra*, ft.41, at 73.

dissociated themselves from their traditional tribal confederations whether by force or for political or socioeconomic circumstances.⁵² Migrating, they re-formed themselves anew and regrouped into more powerful tribal configurations in Iraq. In that sense, it should be kept in mind that tribal custom in Iraq was certainly not in any way an ‘ancient’ tradition as the British believed it to be, but rather partly formed out of a modern historical process of tribal reconfigurations and movements. It was no wonder that the renowned Iraqi sociologist ‘Alī al-Wardī argued that this historical process was the root of a ‘cultural paradox’ that shaped the Iraqi personality, and explained the common Iraqi’s general ambivalence to state authority.⁵³ al-Wardī argued that the Iraqi psyche contained an internalized tension between tribal and urban modes that produced a ‘schism of the Iraqi personality’.⁵⁴ This ‘schism’ would operate depending on the circumstances – in times of war, Iraqi society reverted to tribal values of ‘*asabiyya*,⁵⁵ while in times of peace sedentary values prevailed. As I will detail below, it could be argued that the British, consequently, took advantage of this ‘schism’ or duality in the ‘nature’ of Iraqi society, and it was for this reason somewhat an effective strategy of colonial and semi-colonial control.

The position of the shaikh of a tribe was attached to his office rather than his person. In other words, the sheikh himself was merely considered *primus inter pares* (‘the first among equals’) with neither privileges nor authority.⁵⁶ The shaikh’s responsibility was vast and included conducting the tribe’s relations with outsiders, the declaration and undertaking of wars, and dealings with (central) governments. He was also responsible for the maintenance of social functions⁵⁷ within the tribe, including the extension of hospitality in his *mudhif* (guesthouse) to the tribesmen, which is considered the center of political deliberations, and where he exercises his

⁵²Hala Fattah, *The Politics of Regional Trade in Iraq, Arabia, and the Gulf 1745-1900*, (New York: SUNY, 1997), at 28-29. One major reason was the birth and spread of Wahhabi revivalist movement in the late eighteenth century, which attempted to forcefully bring into submission townsmen and tribesmen to the Wahhabi ‘*aqida* (credo), forcing certain tribes to migrate.

⁵³‘Alī al-Wardī. *Shakhṣīyat al-Fard al-‘Iraqi* [The Nature of the Iraqi Personality]. (Amman: Dar al-Warrāq, 2009), at 44-45.

⁵⁴ *Ibid.*

⁵⁵ ‘*Asabiyya* is a term that refers to ‘social solidarity with an emphasis on group consciousness, cohesiveness and unity’. It was first coined and popularized in Ibn Khaldun’s *Muqaddimah*. See *The Oxford Dictionary of Islam*.

⁵⁶ Clinton Bailey. *Bedouin Law from Sinai & the Negev: Justice without Government*. (2009) (New Haven: Yale University Press) at 14. This is the reason that the shaikh traditionally viewed his office as a burden as the proverb goes, ‘a shaikh is rag on which everyone wipes his dirty hands’.

⁵⁷ A third or even half of the cultivated area of the *dīrah* was set aside as revenue for the *mudhif* so that the shaikh could discharge his functions. *Ibid.*

judicial function of resolving disputes amongst his tribespeople.⁵⁸ Robert Fernea has characterized the tribe as a ‘jural community,’ whereby the *mudhif* of the shaikh is the ‘center of jural activities’: ‘[i]ndividual crimes which conspicuously violated the moral code of all tribesmen...might result in physical punishment as described by the shaykh and *ajāwīd* (or elders) of the tribe, or in banishment of the defendant and the kinsmen who supported him’.⁵⁹ The notion of justice for the bedouin is one that emphasizes the notion of ‘right’ as one of entitlement.

When an injustice has occurred a tribesman generally has a right to rectify that injustice within the context of his tribe’s customary law. So, if murder occurs for instance the tribesman of the victim could enforce his right by killing the murderer or the murderer’s clansmen with impunity.⁶⁰ In bedouin eyes, the restoration of justice could only occur in this way within the difficult and dangerous environment of the desert where there is no central authority to protect him. As for the settled tribesman not living in a desert environment, it was the restoration of the honour of his tribe, which remained the paramount function of a vendetta. The bedouin concept of justice therefore should be understood in relation to both the importance of security and deterrence in a desert environment, and the importance of honour in tribal culture. It is in this way that ‘bedouin law...seeks to deter violations by endorsing the principle of mutual liability, according to which every man is accountable for the actions of his clansmen and is subject to punishment for them.’⁶¹

The perfect example of this is that of the settlement of a blood-feud by giving a woman of one tribe to another, what is referred to as *faṣl*. Although a cash payment is sometimes permitted, it is the latter that is usually what ‘herald(s) real peace between the disputing segments’ as the offspring of these marriages is real proof that the feud has truly been settled.⁶² The point to be made here is that while certain actions of tribesmen could be conceived as

⁵⁸ Kamil Mahdi. *State and Agriculture in Iraq: modern development, stagnation and the impact of oil* (2000), at 73. Shakir Salim writes that the *mudhif* serves as a ‘social center, political conference chamber, and a court of justice’. Salim. *Marsh Dwellers of the Euphrates Delta* (1962) (University of London: Athlon Press), at 72-82. It has been described elsewhere as akin to a ‘parliament’ for tribesmen. al-Barāzī, Nurī Khalīl. *al-Badāwa wa al-Istiqrār fī al-‘Iraq* [The Bedouin and Settlement in Iraq], (Cairo: M’had Bihūth wa al-Dirāsāt al-‘Arabīya, 1969), at 100.

⁵⁹ Robert Fernea. *Shaykh and Effendi: Changing Patterns of Authority Among El Shabana of Southern Iraq*, (1970) (Cambridge: Harvard University Press), at 93

⁶⁰ Bailey, *supra*, ft. 56, at 16, 17.

⁶¹ *Ibid*, at 18.

⁶² Fernea, *supra*, ft. 59, at 112. It is usually only after bearing a child from such a marriage that the woman could return to her family if she so desires, although this is not always the case as it depends on the custom of the particular tribe.

evidence of ‘lawlessness’ in the deserts, this is an oversimplification and an incorrect characterization, as the tribal system in fact comprised an intricate and effective system of customary law, which performed specific social functions. Here, one could also refer to the practice of raiding in the desert, which should not be confused with theft, for the bedouin resorts to the collective act of raiding only as a means of sustenance in an environment that ordinarily lacks rainfall, drinking wells and pastures. Raiding is therefore not equivalent to thieving or even war, but rather is a part of the bedouin’s traditional way of life.⁶³

III. The Tribal Criminal & Civil Disputes Regulation: its origins, juridical characteristics & wide implications

The British approach to dealing with the tribes of Iraq was the complete reversal of the detribalization policy of the Ottomans that was aimed at the destruction of the cohesiveness of the tribes, with an attempt to render them under the control of the Ottoman state.⁶⁴ The British Political Officers sought to find the appropriate balance of ‘internal political forces’ by consolidating a firm connection between the *Sharifian* ex-officers running the state and certain selected tribal sheikhs.⁶⁵ They therefore began rebuilding the tribal system from the outset of their occupation, selecting ‘official’ shaikhs, who were made responsible for peace and order in their tribes to ensure the protection of British interests lines of communication and property.⁶⁶ This strategy was based on the notion that entire tribes could be controlled through the influence of their shaikhs. As Attiyah illustrates, ‘[i]n the long run, both policies [British and Ottoman] had similar consequences – a schism in tribal institutions – but they arose from different sources: the British alienated the Shaykh from his tribe, while the Turks multiplied the number of Shaykhs to the detriment of tribal unity and solidarity...the Turks... tried to alleviate the position of his

⁶³ Fuad Baali. *Relation of the People to the Land in Southern Iraq*, (Gainesville: University of Florida Press, 1966), at 5.

⁶⁴ Albertine Jwaideh. “Tribalism and Modern Society: Iraq, a Case Study” in R.M. Savory, ed., *Introduction to Islamic Civilization*, (Cambridge: Cambridge University Press, 1976), at 165.

⁶⁵ See David Pool. “From Elite to Class: The Transformation of Iraqi Political Leadership,” in Abbas Kelidar (ed.), *The Integration of Modern Iraq* (London: Croom Helm, 1979), 63-87. Pool refers to this as the ‘great bargain.’ (at 81). Batatu, *supra*, ft. 41, at 88, 91.

⁶⁶ Phillip Ireland. *Iraq: A Study in Political Development* (New York, The McMillian Co, 1938), at 94.

tribesmen as against that of his Shaykh, but the British reversed the emphasis by upholding the Shaykh's interest against those of his tribesmen'.⁶⁷

To institutionalize their policy, the British drafted and imposed the (legal) instrument of the *Tribal Criminal and Civil Disputes Regulation* (TCCDR), extending it into ordinary state law in 1924, and enshrining it in the constitution. The TCCDR was first issued during the British occupation of southern Iraq in 1916. It was, in other words, initially drawn up as an instrument of colonial administration and pacification, yet ultimately, 'what may have begun as an administrative expedient ended as political necessity'.⁶⁸ The TCCDR constructed a separate tribal legal system that was severed from civil and criminal courts of the state. The jurisdiction of the national courts was therefore institutionally restricted. The TCCDR guaranteed that the selected shaikh would dispense the administration of justice amongst his tribespeople according to customary law and tribal tradition.⁶⁹ It therefore maintained 'the tribal law as the law of the tribal land,' while 'enhancing the jural role of the sheikh,' reinforcing primacy in his person rather than his office.⁷⁰ The TCCDR defined a tribesman broadly as follows: "Tribesman" means a member of a generally recognized tribe or tribal section which has been accustomed to settle its dispute by recourse to the arbitration of elders or shaikhs and not be recourse to the Courts of the land as ordinarily constituted.⁷¹ The authority of the selected shaikh (who now gained political and economic power through tax subsidies, land and seats in parliament) was now dependent on British colonial power and particularly the Iraqi state rather than his tribesmen. This had a tremendous transformative effect on the social and economic relations between the shaikhs and their tribesmen, eventually opening the door for the institutionalization of capitalistic exploitation and accumulation in rural Iraq and as will be shown the TCCDR transformed the very customary laws that were intended to be 'preserved'.

Before turning to the wide implications of the TCCDR in Iraq in more detail, it is important for this analysis to trace the origins of this piece of legislation and colonial instrument. The TCCDR could be directly traced to the administrative methods developed by Sir Robert

⁶⁷ Ghassan Atiyah. *Iraq: 1908-1921. A Socio-Political Study*, (Beirut: The Arab Institute for Research and Publishing, 1973), at 235.

⁶⁸ Batatu, *supra*, ft. 41, at 88.

⁶⁹ The shaikh would in turn select supposedly 'neutral' tribal elders or '*arifeh* who are familiar with customary law. These elders were close advisors of the shaikh and so were not actually 'neutral'.

⁷⁰ Pool, *supra*, ft. 65, at 78.

⁷¹ TNA. Lt. Col. E.B. Howell, Revenue Secretary to the Civil Commissioner, "Land Revenue Demand: Theory and Practice," Administrative Report on the working of the Revenue Dept. for the year 1919; CO 696/2, Iraq Administrative Reports, 1919.

Sandeman in the North-West provinces (present-day Baluchistan –in Pakistan- and Afghanistan) in the late nineteenth century, which were aimed at the pacification and in turn protection of British interests in the frontiers surrounding India.⁷² Sandeman's methods (which were first successfully used in 1876) were not necessarily unprecedented, but were still a unique synthesis of approaches of indirect rule applied elsewhere in the Empire.⁷³ These were based on some basic premises: first, know and befriend the tribes. Second, adhere to tribal custom as much as possible and work with tribal leaders and chiefs. Third, bind the tribe to the government by payment for tribal service. Finally, peaceful methods must prevail, although overwhelming force must be used when necessary.⁷⁴

In this way, Sandeman hoped to 'knit the frontier tribes into our imperial system and make their interests as ours... [so as to] certainly depend upon them being on our side'.⁷⁵ Sandeman, therefore, believed in preserving and rebuilding the tribal system in Baluchistan that he saw as being in decay. The aim was that by appealing to the tribes' own customs and traditions, they would perceive themselves to be under their own rule, and as long as this served British imperial interests, this administrative system would cheaply run itself.⁷⁶ As the Viceroy of India, Lord Curzon once declared in a speech made in honour of Sandeman, 'I want them [the native leaders] to unite with the British Raj in the settlement of their feuds and in defense of their own country... I want them to become ... the trusted soldiers and feudatories of the Great Queen, and to realize, that while there is no use of fighting us, because we are so strong as always to defeat them in the end, their religion, their traditions, even their independence are most safe when they enter into friendly relations with the British government...'⁷⁷

These basic principles were indeed considered to be useful for other parts of the Empire and were in turn diffused in such a manner. In a lecture given to The Royal Central Asian Society in 1932, Colonel C.E. Bruce, argued for the universalization of the Sandeman policy, which he saw as a method that should be put into practice around the world: 'That Sandeman's policy is

⁷² See T.H. Thorton, *Col. Sir Robert Sandeman: His Life and Work on Our Indian Frontier. A Memoir, with Selections from His Correspondence and Official Writings* (London: John Murray, 1895).

⁷³ Approaches of 'indirect rule' include that of Joseph Gallieni in Senegal, Tonkin and Madagascar and Fredrick Lugard in Asia and Africa.

⁷⁴ Tripodi, Christian. *Edge of Empire: The British Political Officer and Tribal Administration on the North-West Frontier 1877-1947* (London: Ashgate, 2011), at 57-58.

⁷⁵ R.G. Sandeman, Memorandum entitled *Relations with Frontiers Tribes*. See Thorton, *supra*, at 356-359.

⁷⁶ Tripodi, *supra*, ft. 74, at 58.

⁷⁷ See George Curzon. *Lord Curzon in India: being a selection from his speeches as viceroy and governor-general of India, 1898-1905*, (London: Macmillan and Co, 1906) at 411.

equally applicable to every tribesman whether Baluch, Pathan, Arab, Kurd, or African; whether he lives in Indo-China, Burma, Morocco, Tripoli, Aden, the Sudan, or East West, South Africa, is I think, absolutely proved from the fact that every colonial administrator has, wittingly or unwittingly, taken him as their example or followed in his footsteps.⁷⁸

The pillar of Sandeman's system was based on the development and reliance on certain customary legal structures and institutions, namely the tribal councils (also known as 'council of elders') or *jirgas*. These *jirgas*, which were institutionalized in law under the *Frontier Crimes Regulation* of 1887 (and later revised in 1901)⁷⁹, ensured that the tribes were governed under the tribe's own legal customs (or 'tribal usage'). Moreover, the *jirgas* did not apply the rules of evidence of a colonial court (generally derived from British law), and were completely separated from the general legal system of the colonial state.⁸⁰ The *Regulation* reserved the Deputy Commissioner's power to overturn a decision issued by a *jirga*, retaining the colonial administrator as 'ultimate arbiters of tribal tradition.'⁸¹ Nevertheless, almost all decisions of the *jirgas* were beyond the right of appeal to ordinary courts.⁸²

Marsden and Hopkins have argued that the Sandeman system and its implications shaped a 'traditionalizing modernity,' which rather than integrate and 'civilize' the tribesman of the frontiers as their imperial Indian counterparts, sought to 'contain, conserve and traditionalize' them in separation of the colonial state.⁸³ Their argument goes on to describe these methods (including the use of law in this context) as a form of 'frontier governmentality,' which created order by excluding the tribesman from the laws and norms of the colonial state; administrating rather than enforcing difference as defined by the colonial state: 'Thus the ethnographic [colonial] state was about control through division while frontier governmentality was about order through exclusion.'⁸⁴ What is interesting for our purposes is the fact that these administrative and colonial

⁷⁸Colonel C.E. Bruce. "The Sandeman Policy as Applied to Tribal Problems of To-day," (1932) in *Journal of the Royal Central Asian Society*, 19:1, 45-67, at 60.

⁷⁹ This regulation was amended several times 1887 and 1901.

⁸⁰ Sir William Barton. *India's North-West Frontier*, (London: John Murray, 1939), at 59.

⁸¹ See Marsden, Magnus and Hopkins, Benjamin. *Fragments of the Afghan Frontier* (New York: Columbia University Press, 2011) at 69-70.

⁸² Willard Berry, *Aspects of the Frontier Crimes Regulation in Pakistan*, (Duke University Commonwealth-studies Center, Monograph number three, 1966), at 40.

⁸³ Marsden and Hopkins, *supra*, ft. 81, at 63. The ideological underpinnings of the preservation of traditional and tribal custom could be found in the works of Henry Main. See Karuna Mantena. *Alibis of Empire: Henry Main and the Ends of Liberal Imperialism*, (New Jersey: Princeton University Press, 2010).

⁸⁴ *Ibid*, at 64.

methods that were devised specifically for the frontiers rather than an actual system of government per se were later on used in a variety of contexts. In that sense, the essence of the Sandeman system of frontier administration and governance as institutionalized by the *Frontiers Crimes Regulation* was flexible enough to be diffused and implanted into other parts of the Empire, extending well beyond its original intent of mere frontier administration.⁸⁵

As will be shown, these imported methods allowed the Iraqi state to have political control over the countryside despite having constricted its legal jurisdiction in the tribal areas. It therefore maintained a juridically weak Iraqi state with a certain measure of political control despite (theoretically) being unable to enforce its legal hegemony throughout the land. Such fragmentation occurred in the context of a semi-colonial legal order that was clearly Western in character despite the appearance of such a traditional form. In other words, the fragmentation of the law (as state and tribal) occurred *within* an all-encompassing semi-colonial order that was Western in form.

Most historians of Iraq tend to focus on the manner in which this dual legal system allowed for a political bond to be established between the state and the tribes, while the British were able to extend its control. The juridical implications of the TCCDR are not dealt with in proper detail. However, my argument entails that the juridical implications of the TCCDR and the dual legal system must be explored in detail to understand that it was in fact an illusory legal separation. It was the inability to completely sever the townsmen and the tribesmen that led to the political and economic tensions that would eventually explode in the form of unrest. Moreover, this legal duality was a form of governmentality in itself; one that was used by the British to maintain its indirect influence. The ‘frontier governmentality’ mentioned earlier was therefore converted into a form of semi-colonial governmentality in the context of Iraq which, despite an attempt to construct a duality in law through the separation of state and tribal jurisdictions, was neither entirely successful nor efficient.

Sir Henry Dobbs, the High Commissioner in Iraq at the time, who himself served in the Northwestern frontiers (namely Baluchistan) between 1909 and 1911 under the Agent-General A.H. McMahon, was a firm advocate of the Sandeman system of tribal administration, and so

⁸⁵ Berry, *supra*, ft. 82, at 8. In Pakistan, the remnants of colonialism is still evident, considering that this regulation is still in force today as it is used as a method of pacification in the frontiers, although the legal ramifications of this have been quite significant, considering how this regulation contradicts the constitution in Pakistan.

strongly supported the application of the TCCDR to the extent that he sent H.M. Drower, the Advisor to the Ministry of Justice, a circular on Baluchistan written in 1907 to ‘explain his point of view’.⁸⁶ Dobbs quoted directly from the circular the words of McMahon, who emphasized the efficiency of the use of customary and tribal law as an ‘...instrument for the suppression of crime which in simplicity and effectiveness can be surpassed by no other legal system which we can invent, for the simple reason that it is based on the character, idiosyncrasies and prejudices of the people among whom it has originated and by whom it has been evolved during long periods of time to meet their own requirements and remedy their failings.’⁸⁷ Therefore, on the one hand, a tested strategy in the Northwestern frontiers was brought into the Iraqi frame for the same intended purpose of pacification, and on the other hand, British officials believed that they were in fact preserving a deteriorating ‘ancient’ legal tradition that was a ‘natural’ part of the tribes in Iraq.

On the other hand, it was the idea that Western standards of justice could not be imposed on the tribes in any direct manner that warranted the emergence of this separate tribal legal system. Here, one is reminded of Arnold Wilson’s claim of the difficulty of imposing any notion of Western law on the tribes of southern Iraq when he first arrived in Basra: ‘[t]o impose the rule of law upon these dissonant and intractable elements was by far the most difficult of the many problems of civil administration in Basra wilayat.’⁸⁸ Of course, this process of legal transformation must be understood within the broader historical context of the previous Ottoman order, which locals were accustomed to, for the tribesman did not find the duality of law as a foreign construct. There was already a ‘duality’ during the Ottoman period between *Shar’ia* (religious) law and *Kanūn* (secular state) law for instance.⁸⁹ Competing legal systems, including

⁸⁶ TNA. CO 730/103, Iraq 1926, vol. 12. Residency, Baghdad, 18 October 1923 to E.M. Drower, Advisor to the Ministry of Justice, Baghdad.

⁸⁷ Dobbs to Pulley (Interior) D.O., S.O. 2140 of 28 September 1924. Delhi, British High Commissioner Files, New Delhi, Justice, File 8/4, as quoted in Peter Sluglett, *Britain in Iraq: Contriving King and Country*, (New York: Columbia University Press, 2007), at 171.

⁸⁸ Arnold Wilson. *Loyalties, Mesopotamia 1914-1917*, (London: Oxford University Press, 1930), at 294.

⁸⁹ Avi Rubin has questioned such a notion of ‘duality’ in Ottoman legal historiography suggesting that the notion of legal plurality is better suited to understand the manner in which *Kannun* and *Shar’ia* law interacted during the Tanzimat period. He argues that Ottoman duality was merely, ‘a matter of doctrine rather than praxis’. See A. Rubin. *Ottoman Nizamiye Courts: Law and Modernity*, (New York: Palgrave MacMillan, 2001), at 56. The case of Iraq affirms this argument, as a positivist duality rather than a more flexible Ottoman legal plurality was not present until the British arrived and constructed it to further their interests. Hence, as Karen Barkey has shown, the legal order of the Ottoman Empire, ‘powerfully contributed to a political culture of diversity and toleration,’ and in that way its legal pluralism was ‘a tool for the management of diversity’. The British Order of legal duality, on the other hand, was rather meant as an instrument of semi-colonial control. See Karen Barkey. “Aspects

tribal custom, co-existed before the arrival of the British and so one should not exaggerate the British role in bringing about a dual or plural legal order. For this reason, the tribesmen considered some form of duality as a natural part of the order of things and therein lies the British ingenuity in imperial and semi-colonial control: the British built on what was already there, while infusing their own notions of justice and legal positivism. Nonetheless, the British strategy of duality should still be considered as an invention, but it was melded quite organically onto the layers of the preceding Ottoman order. In the end, however, the intention of keeping state law based on ‘British ideas of justice’ removed from tribal customary law did not actually work as the tribal legal order itself turned out to be a hybrid creation of the very hegemonic western legal tradition that it was meant to be severed from.

A closer look at the provisions of the TCCDR illustrates how this piece of legislation led to a significant amount of abuse. It was drafted in a way that ensured that the shaikh had wide powers that were unchecked and provided no safeguard. Just like its archetype in the Northwestern frontiers, there was no recourse to or process to appeal an order made under the TCCDR.⁹⁰ Nor was there *habeas corpus*. Furthermore, the finality of any decision under the TCCDR could be brought into question and revisited under sections 11 and 50 for up to two years after it was made. Initially, the Political Officer responsible for the administration of the district, and later the *mutassarifs* (governors) had very wide discretion under section 40 to elect to try a citizen under the tribal system rather than the national courts.⁹¹ This infamous provision led to considerable injustice and arbitrary effects. For example, dissident (non-tribal) townsmen were occasionally tried under tribal law rather than state law, and subsequently put into a form of ‘internal exile’ by an administrative order specifying where one was to reside.⁹² It is not merely the trying of a townsman under tribal law that was arbitrary and unjust, but even the removal of a tribesman or an entire tribe⁹³ from a specified district as a form of punishment.⁹⁴ The role of the

of Legal Pluralism in the Ottoman Empire,” in Lauren Benton and Richard J. Ross (eds.), *Legal Pluralism and Empires, 1500-1850*, (New York: New York University Press, 2013), at 85.

⁹⁰ In theory, an appeal in the form of a petition to the Ministry of Interior is available, but this is not an appeal per se and the Ministry rarely if ever interferes in such matters. See Mohammed Fadhil Jamali. *The New Iraq: Its Problem of Bedouin Education*, (New York City: The International Institute of Teachers College, Columbia University, 1934), at Appendix F at 143-144.

⁹¹ Batatu, *supra*, ft. 41, at 93.

⁹² The TCCDR was used in this manner to deal with those who agitated during the anti-Zionist demonstrators against General Maude, as well as, the strikers during the 1931 General Strike, *Ibid*.

⁹³ This could be compared to the *Bengal Criminal Tribes Act* of 1871 that essentially had the same function in India.

⁹⁴ The Iraqi state in such a situation was merely following the colonial practice of the British of using certain aspects of customary law for their own political purposes. Here, William Barton’s reference to

administrative official according to the TCCDR was to affirm a TCCDR order and ensure that it was enforced. The fact that these officials had such wide discretion made them susceptible to bribery from shaikhs who wanted to influence a certain outcome.⁹⁵ It is for this reason that Batatu has fittingly referred to the TCCDR as more of an ‘arbitrary administrative regulation’ in the context of its uses and interpretation, especially in relation to the cities.⁹⁶ The TCCDR has been criticized, even at times by some shaikhs for giving too much discretion in the hands of these administrators, who were neither trained in Iraqi (state) law nor tribal law and custom.⁹⁷ In that sense, the TCCDR was, using the words of Mamdani, referring to the customary legal institutions enforced by the British in Nigeria, ‘the triumph of techno-administration under the guise of indirect rule through customary law...[That is,] a retreat into legal administration’.⁹⁸ The rule of law turns into the rule of legal administration (i.e. a concern for ‘law and order’ in the tribal area), as the whole purpose of such structures was the administering of (semi-colonial and imperial) power *through* the enforcement of tribal custom and tradition.

IV. The positivist ‘duality’ of law in Iraq & its limitations

My main argument here is that the legal duality that was created by the British was in fact quite illusory, not only because it was incomplete or did not reflect reality on the ground, but also because the executive used the tribal system for its own advantage, often to avoid the implications of Iraqi law. I have already shown how the TCCDR was used as an instrument of administrative control and oppression by the Iraqi state. What is also interesting is that tribesmen did not hesitate to use the national courts when it was in their interest to do so. According to one shaikh, the only

‘tribal responsibility’ in the frontiers is fitting. It illustrates that one could enforce a remedy against an entire tribe rather than the responsible tribesman, while reminding the reader that, “It is their own custom, not a British invention” (Barton, *supra*, at 60). The reality of course was that by enforcing it in such a manner (through the Frontier Regulation), it ceased to be ‘their own custom’ as such.

⁹⁵Muhammad Tawfiq Husayn. *Nihāyat al-Iqtā‘ fi al-‘Iraq: (The End of Feudalism in Iraq: A study of the conditions of the Iraqi peasant & the Agrarian Reform Law)*, (Beirut: Dar al-‘lim lil-malayeen, 1958), at 79.

⁹⁶*Ibid.* Willard Berry had a similar conclusion in relation to Pakistan’s *Frontier’s Crimes Regulation*: “A total consideration of the Regulation reveals that it was neither derived from custom, nor endowed with the guarantees of due process and equal protection which characterized the Western system of adjudication, and it was the specific intent of the Government to bestow a large portion of discretionary power upon local administrators. The Regulation cannot be conceived as an instrument of justice in either the traditional or Western sense nor can it be considered a substitute for either.” Berry, *supra*, ft.41, at 41.

⁹⁷Jamali, *supra*, ft. 90, at 144.

⁹⁸Mahmood Mamdani. *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, (New Jersey: Princeton University Press, 1996), at 125.

reason why a tribesman preferred the tribal courts was that he hoped to receive the monetary remedy ('ransom' was the word he used) that was owed to him under customary law.⁹⁹ In reality, however, not unlike the preceding Ottoman order, the tribesman found strategic ways to exercise his rights under state law by disguising himself as a townsman when it was to his advantage to do so. M.N. Kadhim (who started out his career as a deputy prosecutor, becoming a criminal court judge and eventually a member of the Court of Sessions) argued that Iraqi state law was continuously encroaching into the tribal legal system.¹⁰⁰ Kadhim had the following to say from his experience as a long-standing member of the bench: '[t]he author in his career has seen tribesmen living in towns or near towns sue one another in civil as well as in criminal courts in towns. When some of them raised the question of tribal customs for one reason or another and asked that the case should be referred to the Administrator, the opponent would immediately reject the suggestion and say that they had nothing to do with tribal customs: they had become "civilized townsmen" and they wanted the "Government" to give them their "rights" or to punish their opponents.'¹⁰¹ In the reverse situation, powerful townsmen would claim to have tribal roots to get away with certain crimes, in particular murder.¹⁰² These instances are quite revealing as they illustrate that the 'dichotomy' between the tribesman and the townsman in Iraq that was constructed in law was not only misleading, but were both in reality encroaching into each other. It shows that the tribesman was not 'primitive' and 'uncivilized' as the British believed in the sense that he was too attached to his tribal roots to rely on the state rather than his tribal customs. The fact was that the tribal and state legal structures existed *in tandem* and in an overlapping manner, for one reinforced the other (as they were interdependent) *within* an overarching semi-colonial Iraqi state and order. It was therefore the function of such a positivist duality that one should focus on, which was to further and strengthen the Iraqi state and in turn British interests after all.

To what extent then was customary and tribal law 'invented' in Iraq? The literature on the 'invention of tradition' and customary law is vast, especially in the context of the history of

⁹⁹ Jamali, *supra*, ft. 90, at 144.

¹⁰⁰ M.N. Kadhim, *Reaction to Crime Under Tribal Law and Modern Codification in Iraq*, (D.Phil. Thesis, Oxford University, 1961).

¹⁰¹ *Ibid*, at 317-318.

¹⁰² An example of this occurred when Abdullah Beg al-Sani, Director-General of the Minister of Interior was murdered in his office by Abdullah Falih Beg al-Sa'dun. Although the murderer was sentenced to death, on appeal he explained that he was defending the honor of his family as al-Sani married the daughter of the late Prime Minister Abd al-Muhsin al-S'adun under opposition from the S'adun family. He argued that he was entitled to be tried under the jurisdiction of the TCCDR and customary law. His plea was successful and his death sentence commuted to a term of imprisonment. See Sluglett, *supra*, ft. 87, at 172.

colonial Africa.¹⁰³ Terence Ranger who was the first to coin such an analysis, argued that what was referred to as ‘customary’ tradition (including *customary* law) was an invention devised by Europeans who believed that they were ‘respecting age-old African custom’.¹⁰⁴ This analysis was eventually expanded, influencing a plethora of legal scholarship (especially in legal anthropology), in particular the work of Martin Chanock on customary law in Malawi and Zambia; Sally Falk Moore’s work on colonial law in Chaggaland, as well as, Sally Engel Merry’s study on law and colonialism in the context of the history of Hawaii.¹⁰⁵ The overarching concern in this diverse body of work was the effect that colonialism had on the legal structures of indigenous societies – the general claim was that the customary law that emerged during these periods of colonization was not a residue of the past (as was believed to be the case) but rather emerged out of the colonial encounter itself. It is in this (strict) manner that it was ‘invented’ rather than ‘discovered’.¹⁰⁶ This line of reasoning was a direct challenge to the dominant (evolutionary) understanding in legal anthropology of what has generally been termed as ‘primitive law’.¹⁰⁷ Customary law is not primitive law, but rather (for the most part and at least structurally) modern (semi-)colonial law in customary garb. Chanock for instance has argued that, ‘the law was the cutting edge of colonialism, an instrument of the power of an alien state and part of the process of coercion. And it also came to be a new way of conceptualizing relationships and power within African communities, which were undergoing basic economic changes...The customary law, far from being a survival, was created by these changes and conflicts. It cannot be understood outside of the impact of the new economy on African communities. Nor can it be understood outside of the peculiar institutional setting in which its creation takes place....’¹⁰⁸

¹⁰³ The main text that started this inquiry was: Terence Ranger, “The Invention of Tradition in Colonial Africa,” in *The Invention of Tradition*, (Cambridge: Cambridge University Press, 1983).

¹⁰⁴ *Ibid*, at 250.

¹⁰⁵ See Martin Chanock. *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia*, (Cambridge: Cambridge University Press, 1985); Sally Falk Moore, *Social Facts and Fabrications: “Customary” law on Kilimanjaro, 1880-1980*, (Cambridge: Cambridge University Press, 1986); Sally Engel Merry. *Colonizing Hawaii: The Cultural Power of Law*, (New Jersey: Princeton University Press, 2000); Francis G. Snyder. “Colonialism and Legal Form: The Creation of ‘Customary Law’ in Senegal”, in *Crime, Justice and Underdevelopment*, (London: Macmillan & Co, 1982), pp.90-121.

¹⁰⁶ There are limits to the notion that customary law was ‘invented’ *tout court*. This has been dealt with elsewhere, but the point here is that one must approach the word ‘invention’ with caution, for customary law was never invented out of thin air. Moreover, the natives and tribes had a role to play in its development, for it wasn’t merely a European invention per se, although it was used to the benefit of Western hegemony and domination. My use of the term ‘invention’ is therefore made in this strict narrow rather than literal sense. For a critique of the notion of invention, See: Thomas Spear, “Neo-Traditionalism and the Limits of Invention in British Colonial Africa,” *Journal of African History*, 44 (2003), pp.3-27.

¹⁰⁷ See E. Adamson Hoebel. *The Law of Primitive Man: A Study in Comparative Legal Dynamics*, (Harvard University Press, 1954).

¹⁰⁸ Chanock, *supra*, ft. 105, at 4.

Customary law was therefore a unique product of the colonial encounter itself and cannot be explained otherwise. It must therefore be understood as being molded by the historical processes of colonialism and capitalism. Nevertheless, it must always be emphasized that this British ‘invention’ was not applied on a tabula rasa, but rather molded into a preexisting Ottoman order.

The ‘customary law’ of the tribes of Iraq should be approached in a similar analytic manner, for it emerged out of and was transformed by British colonial policies, rather than being a restoration of an ancient tradition from the past. It is true that the ‘corpus of law’ that was applied under the jurisdiction of the TCCDR was ‘uniquely Arab,’¹⁰⁹ but one would need to explore the underlying changes within the semi-colonial Iraqi order to expose the transformations that these legal processes were both undergoing and stimulating. Historians of Iraq have generally been aware of the fact that the customary and tribal law that was applied under the TCCDR was somewhat different from what was there before the arrival of the British and their institutions. As I have already mentioned, there are limits to the notion that the British ‘invented’ this customary law tout court, for they contributed to this invention by molding specific features of such law so as to make it compatible with their imperial agenda. By doing so they created a unique positivist duality in Iraqi state law.

What was it exactly then that was different about British ‘duality’ as opposed to Ottoman ‘duality’? The law has generally been approached in a strictly functionalist manner, and what was generally said (usually in passing) was that tribal institutions and law contained a ‘fluidity’ that was ‘frozen’ and which was made ‘rigid’ by a process of institutionalization. To a certain extent this is true, but a much more in-depth analysis of the law is needed here. One would need to ask more specific questions, for instance: *how* did this process occur and what does it reveal about the nature of colonial and semi-colonial legality? It was mainly modern legal positivism that the British brought into the fold. It was surely this *positivist* characteristic of modern (Western) law and its legal form that brought about such transformation (or even mutation) to indigenous legal traditions. The positivist semi-colonial legality ensured that the social and political relations that were altered would be reconciled with the capitalist system turning certain *customs* (as well as non-customs¹¹⁰) based on practice and *usage* into *systematized formal legal rules backed by a coercive state*. It is in this way that such ‘customary law’ was in fact a part from modern (state)

¹⁰⁹ See Hanna Batatu, “Of the Diversity of Iraqis, the Incohesiveness of their Society and their Progression...” in Hourani and Khoury (eds.), *The Middle East: A Reader*, (1993).

¹¹⁰ As Mamdani writes, ‘customary law consolidated the non-customary power of chiefs in colonial administration’. *Supra*, ft. 98, at 110.

law rather than a past (primordial) tribal tradition. Its function was (ironically) to strengthen the centrality of the Iraqi state, while furthering British imperial interests. So, the duality that was imposed in Iraq by these institutions and structures should be approached in such a rounded manner – the TCCDR (including the corpus of tribal law that was applied and interpreted through this instrument) was itself *entirely* apart of the general institutions of the modern (positivist) law of the state. It did not necessarily bring about a space of suspension of law (through administrative legality) *per se*, but rather following Esmeir it allowed for ‘positivist elasticity’.¹¹¹ The positivist character of the modern (semi-colonial) law defined the parameters of the tribal legal system and its institutions, and despite having no jurisdiction in tribal matters, the state retained through such elasticity considerable influence. Consequently, the *duality* of law in Iraq recounted above that has generally been perceived as a characteristic of British indirect rule turns out to actually contain *pervasiveness despite its fragmentation*, which allowed the Iraqi state room to maneuver and in turn invade the social/political spaces of townsmen and tribesmen alike.¹¹²

V. Land tenure, property & the origins of capitalist relation in Iraq

I will now turn to the complex question of land tenure to explore the socio-economic aspects of this historical narrative. An analysis of land tenure and its legal dimensions is necessary if one is to grasp how the peasant was dispossessed of his tribal land becoming a mere tenant (and later, a bonded serf), and the manner in which the shaikh became an absentee landlord. In this section, I will briefly narrate this transformative process in the context of land tenure in Iraq, which could be considered as the principal source of injustice and inequality during this period in its history. Before dealing with the approach of the British and the Iraqi state, I will begin by briefly describing the customary law relating to land, and the manner in which the Ottomans intervened igniting the massive transformative changes to come. I will then turn to an analysis of the significance of law in these processes and how it has been unfortunately overlooked in the historiography of Iraq, while considering the wider implications of an approach that would take colonial and semi-colonial law seriously.

¹¹¹ Samera Esmeir. “On Coloniality of Modern Law,” *Critical Analysis of Law*, 2:1 (2015), at 22.

¹¹² *Ibid.*

A tribe's traditional attachment to their land rested on certain customary legal practices that were varied and multiple depending on the region and environment in question.¹¹³ One thing that these varied practices did have in common, however, was that they were based on very distinctive indigenous notions of property. I have already mentioned earlier how land was traditionally held communally by the tribe, and that absolute property was an alien concept to the tribesmen.¹¹⁴ Instead, it was the tribal *dīrah*, a term that conveyed 'the sense of the domain over which the tribe exercised sovereign rights, rather than that of exclusive ownership,' which was so different from the notion of ownership and yet bore 'a more profound sense of property'.¹¹⁵ A good example of such tribal customary law relating to land was the *lazma*, which was a form of corporately held real property by the tribe. It was claimed in perpetuity (as long as it was able to defend it) and did not depend on the continuous maintenance of the land through pasture or cultivation.¹¹⁶ As long as the land was either initially brought into production by its toil or forcibly taken by conquest, the land became the communal property of the tribe.¹¹⁷ In this manner, tribal *lazma* was 'a form of collective holding paid for by either the toil or the blood expended by the tribe rather than by a purchase price or its equivalent.'¹¹⁸ The land was henceforth clearly as of yet outside the market and commercial transactions.¹¹⁹ The shaikh commonly assigned the tribesmen a *saham* (or share) of the cultivated areas of the land in accordance with the tribe's needs, and so land tended to be distributed in a more equitable manner. Furthermore, the rights attached to *lazma* allowed for more freedom of use, as it was not dependent on continuous cultivation and remained valid long after the land was abandoned.¹²⁰

The main policy of the Ottomans towards the tribes from the early nineteenth century onwards was that of a policy of detribalization as the tribal order was considered as an obstacle to its state authority, especially with regards to the revenue collection of its Empire. Customary laws

¹¹³ There are generally two main zones with very different agricultural conditions: the rain-fed zone in the North and the irrigation zone in central and southern part of the country. This section will be focused on the latter, as this is where the system of 'semi-feudalism' eventually became concentrated.

¹¹⁴ Haider, *supra*, ft. 45, at 316.

¹¹⁵ Albertine Jwaideh, "Aspects of land tenure and social change in lower Iraq during late ottoman times" in Tarif Khalidi (ed.), *Land Tenure and Social Transformation in the Middle East*, (Beirut: American University of Beirut, 1984), at 334. Jwaideh details these traditional customary practices relating to land, such as *talla'iyya* ('choice-lands') a form of tenancy widely practiced in the middle Euphrates; and *naqasha*, which she describes as 'possibly the oldest form of prescriptive right in continuous practice known to man', at 343.

¹¹⁶ *Ibid*, at 335.

¹¹⁷ *Ibid*, at 336.

¹¹⁸ *Ibid*.

¹¹⁹ Mahdi, *supra*, ft. 58, at 73.

¹²⁰ Jwaideh, *supra*, ft. 115, at 337.

and practices were never recognized by the Ottoman authorities, which considered all land as being within the domain of the state. Nevertheless, Ottoman *wālīs* (governors) based in the towns continuously failed to extend its authority into the rural areas due to vigorous tribal resistance.¹²¹ Hence, Ottoman legal structures continued to coexist with these traditional tribal customs until the Ottoman (administrative, military and legal) reforms or the *Tanzīmāt* were initiated in the mid nineteenth century. The *Tanzīmāt* began the process of integrating the three provinces of Iraq (Baghdad, Basra, and Mosul) into the purview of centralization from Constantinople. It also aimed at modernizing the state, while reforming the economy in line with expanding international and foreign trade.¹²² Part of the reforms included the Ottoman Land Code of 1858, which aimed at strengthening the financial viability and in turn the power of the Ottoman state.¹²³ This Code categorized landholding into several designations, the two of which concern us here are *mīrī* (state un-alienated land) and *mūlk* (freehold land).¹²⁴ The Code provided a framework for the registration of individual land rights, granting taxpayers *tapū sanads* (title deeds), in turn creating a new tenure over land (*tapū*). The main intention of this piece of legislation was to weaken tribal institutions by connecting individual cultivators directly to the state, allowing them to obtain rights to usufruct *mīrī* land on the condition of tax payment and cultivation, as well as providing an incentive for higher production.¹²⁵

The Code was clearly in direct contradiction with customary law and tribal principles, which were based on the notion that a tribe held land communally as long as it could be militarily defended against encroachment by other tribes, rather than dependent on the recognition of the state. The Code, expressly forbade communal ownership, and only recognized prescriptive rights of individuals who could prove possession and cultivation of a plot for at least ten years. It was therefore generally almost impossible for a semi-settled cultivator (or a customary *lazma* holder) to meet such an evidential threshold and gain a prescriptive (*tapū*) right. Moreover, a tribesman

¹²¹ Albertine Jwaideh, "Midhat Pasha and the Land System of Lower Iraq," (1963) in St. Antony's Papers Vol. XVI, *Middle Eastern Affairs* No. 3, pp. 106-137, London, at 112.

¹²² See Ebubekir Ceylan. *The Ottoman Origins of Modern Iraq: Political Reform, Modernization and Development in the Nineteenth Century Middle East*, (IB Taurus, 2011).

¹²³ Marion Farouk-Sluglet and Peter Sluglet. "The Transformation of land Tenure and Rural Social Structure in Central and Southern Iraq, c. 1870-1958," *International Journal of Middle East Studies* 15 (1983), pp.491-505, at 493. This Code was not put into practice in Iraq until 1869 during the governate of Midhat Pasha.

¹²⁴ The other categories were *waqf* (religious endowments); *metruka* (land for common use and easements, such as roads for example), and *mewat* (uncultivated land, ownership of which was with the government). See Herbert J. Liebesny. *The Law of the Near and Middle East: Readings, Cases and Materials*, (New York: SUNY, 1975).

¹²⁵ See Matti Moosa. "The Land Policy of Midhat Pasha in Iraq, 1869-1872," *Islamic Quarterly*, Jul 1, (1968); 12, 3, pp.146-159.

not only saw no reason to pay to gain title to his traditional land, but also was highly suspicious of the state, especially the potential of getting conscripted for its military. In this way, the application of the Code brought about the unintended consequences of the distribution of *tapū sanads* to city merchants, tax-farmers and a few tribal shaikhs, who went ahead and registered their names to certain lands (often through fraudulent methods and bribery) as they realized the value in ‘the possession of slips of paper’.¹²⁶

Most bedouin tribesmen, however, did not understand the value of written law or the power of contractual documents. This is reflected well in one response of a shaikh when asked why he did not obtain *tapū* to formally define the boundary of his land in a legal document, “...he drew his sword and said, ‘My sword is my boundary, and I don’t want a better one, yes that’s it a sword is the thing and no nonsense about writings...’”¹²⁷ Although the Code accelerated the already ensuing detribalization process, it destroyed the military confederations, replacing them with a ‘multitude of antagonistic tribal sections,’ creating a new socio-economic impetus that altered the old tribal structure. This sometimes occurred in an atmosphere of violent resistance from tribesmen, who were becoming consciously aware of how their ancient landholding customary rights were slowly being taken away from them.¹²⁸

The tribesman was now alienated from his land as this new legal tenure system turned him into a mere tenant (at will) – an agricultural worker cultivating the land for his shaikh, who now became a landlord (or an absentee landlord living in the cities).¹²⁹ *Tapū* grants were eventually abolished in 1881 as the Ottomans realized the unintended effects of the Code, which merely entrenched the powers of a new class of *tapū*-holders with no real incentive to pay taxes.

¹²⁶ Farouk-Sluglet and Sluglet, *supra*, ft. 123, at 495. What consequently emerges was a ‘total divergence between registered titles and actual possessory titles that could be supported at law by the doctrine of prescription’. See Farhat J. Ziadeh. *Property Law in the Arab World* (London: Graham & Trotman Limited, 1979), at 10.

¹²⁷ J.S. Mann, *An Administrator in the Making* (London, 1921), at 202-203.

¹²⁸ Batatu, *supra*, ft. 41, at 77. The best example where such violence manifested was in the Muntafiq region where fragmentation of the tribes was rife, while tribesmen rejected the enforcement of *tapū* registered rights of certain members of the Sa’dun family, who backed the Ottomans and acquired wealth from increased rents. This made one British political officer describe the scene in the following manner: “It should be realized that throughout the entire Mutaḥfik country there has been a sort of miniature French Revolution taking place... It has been nothing more or less than a revolt of the serf population against the landed classes...” (Iraq, Ministry of Interior File No. 48/47. Administrative Report of Suq al-Shiyukh and District for year, 1916-17), as quoted in Atiyah, *supra*, ft.67, at 244.

¹²⁹ Atiyah, *ibid*, at 29. This sharecropping system meant that the cultivator or *fellaḥ* did not work for a fixed wage, but rather for a share of the crop. An absentee landlord generally relied on his *sirkal* (sub-shaikh) to manage the land.

In other words, they recognized that granting such documents without an effective system to enforce tax payments would only lead to their loss of control. Hence, although the process described above was interrupted and reversed, it was this Ottoman intervention into the customary legal practices of the tribes of Iraq that initiated the changes in the socio-economic relations of the tribes, creating the advent of the first ‘wave of large landlordism’, and setting the stage for the impending British colonial intervention to further accelerate such transformation, eventually further entrenching these exploitative capitalist relations in law.¹³⁰

When the British arrived, the state of land tenure was entirely confusing, contradictory and unsettled. The preceding system and its interruption produced a situation whereby only 20 percent of all the land was *tapū* registered, while the rest of the 80 percent remained as *mīrī* (state-owned) land.¹³¹ There were many competing claims (between *tapū* holders and customary *lazma* holders for example). However, the mandatory administration did not attempt to settle these claims. There was therefore no general policy dealing with land tenure during this transitory period.¹³² The British initially approached the tribes based on the region in question, as their concern was merely political and military expediency. Nevertheless, from the outset they realized that supporting one shaikh against his rivals was an efficient way to control the tribes. The selected shaikh would receive financial inducements, favorable land leases and tax breaks as long as he supported the British presence and maintained order in his tribe.¹³³ As A.T. Wilson recounts in his memoirs, ‘[t]he Shaikhs... were for the most part reasonable men, of substantial means, with many of the instincts of wealthy country gentlemen. They were in most cases directly dependent on the Civil Administration for the positions they held; realizing that their positions entailed corresponding obligations; they co-operated actively with the political officers in suppressing offences against public order.’¹³⁴ This method of expedient administrative control, eventually emerged as, ‘a deliberate scheme of government,’ and the tribal policy was clarified further in the favor of bolstering the power of collaborative shaikhs.¹³⁵ These shaikhs consequently became government agents, with the principal role of maintaining order and collecting revenue from their designated tribesmen. This led to the further alienation of the shaikh

¹³⁰ Haim Gerber, *The Social Origins of the Modern Middle East*, (London: Mansell Publishing, 1987), at 75.

¹³¹ Warriner, ft. 49, at 145.

¹³² *Ibid.*

¹³³ Wilson, *supra*, ft.88, at 77.

¹³⁴ *Ibid.*, at 95.

¹³⁵ Atiyah, *supra*, ft. 67, at 234.

from his tribe as his power was now derived not from the respect of his tribespeople but from the British.¹³⁶

As mentioned earlier, the British therefore reversed the Ottoman policy of detribalization, strengthening what they saw as decaying tribal institutions. I have already discussed this policy earlier in the context of the TCCDR, and its political and juridical implications. Together with these tribal legal and political instruments, the British relied on the shaikh to extract surplus from agriculture. In the mean time, the intention was to uphold the status quo so as not to create 'new' rights in land where none existed. For this reason, the British administration temporarily continued to apply (its interpretation of) the Ottoman Land Code and briefly revived the *Tapū* department.¹³⁷ In the Muntafiq region, for example, there were attempts to settle title, but this only strengthened the landowners even further. *Tapū sanads* although considered as defective legal documents were at certain instances provisionally considered as the 'standard,' and the British Political Officers were left as final arbiters on the merits of each document until further considerations of the land question were made by the administration.¹³⁸ However, this temporary arrangement which 'accepted the legal rights of the landlord against the traditional tribal right to a separate *Dīra*...perpetuated the injustices done by the Turkish regime to the tribes,' for the real question was not the legal interpretation of the *sanad*, but rather the complete subjection of the tribes to landlords and the state.¹³⁹ In this way, the (shaikhly) *tapū* landholders claimed and at times were successful at receiving settlement of title from the mandatory administration during this transitory period, for they readily used the state to further oust the traditional prescriptive rights of the tribesmen.¹⁴⁰ Finally, with rampant absentee landlordism came the widespread use of mechanical pumps as a novel method of irrigation, which although in theory increased the crop areas, in fact merely enhanced the ability of pump owners (who were mostly wealthy capitalist townspeople) to claim ownership of large tracts of land, bringing about a another type of landholder into the fold.¹⁴¹ The government further

¹³⁶ *Ibid*, at 235.

¹³⁷ Sluglett, *supra*, ft. 87, at 168. See E.B. Howell. "The Qanun Al Aradhi" (1922) in *Journal of The Royal Central Asian Society*, 9:1, 21-39. Howell suggests that fraud in *tapu sanads* was 'glaringly apparent...nevertheless, these preposterous documents, unless fraud is proved...which is practically impossible...are treasured by all the most influential men in the country, and generally regarded as being unassailable in law' (at 32).

¹³⁸ Atiyah, *supra*, ft. 67, at 245.

¹³⁹ *Ibid*, at 246.

¹⁴⁰ Doreen Warriner, *Land Reform and Development in the Middle East: A study of Egypt, Syria and Iraq*, (Oxford: Oxford University Press), at 145.

¹⁴¹ Mahdi, *supra*, ft. 58, at 99. Sassoon, Joseph. *Economic Policy in Iraq 1932-1950*, (London: Frank Cass, 1987), at 143.

ingrained these relations when it passed a law in 1926, which gave partial tax exemptions to these pump owners.¹⁴² These developments during the mandatory period consequently continued the processes of the dispossession of the cultivator-peasant.

It was not until 1932 that a legal framework for land settlement was established after Ernest Dowson was commissioned by the Iraqi government to write a report and make recommendations on land tenure.¹⁴³ Dowson began his report demonstrating that a settlement of rights to land ‘presupposes and requires some stable basis of land law or at least of legalized custom on which such rights can be founded’ and none existed in Iraq.¹⁴⁴ It was for this reason that a proper and clear land survey was required that was not based on ‘mere academic discussion,’ but practical policy and ‘local knowledge of the land’¹⁴⁵ Although Dowson saw the conditions of land tenure in Iraq as being ‘in various stages of divorce from innumerable primitive practices, but still rarely wedded to law,’ and although he admitted that it was ‘very difficult’ to focus ‘the whole kaleidoscope panorama into one generally intelligible picture,’ he insisted that it was necessary to proceed with some form of a generalized plan of diagnosis.¹⁴⁶ Dowson therefore made it clear that the state should make direct connections with the cultivators rather than rely on individual landholders as intermediaries. This he argued was what the Ottoman Tapū system was intended to do in the first place – ‘promote a body of industrious peasant proprietors and taxpayers’.¹⁴⁷ He argued that it would be ‘dangerous to public peace and contentment’ if land were disposed of in an unrestricted manner. The cultivators and small landholders must gain some form of economic stability and experience lest reform merely turns into an ‘incitement to the piling up for unproductive debt’.¹⁴⁸ In this way, ‘the enormous territories of mīrī land now existing’ which constituted the main capital of the nation should not be handed over to individuals unless ‘accompanied by equivalent advantages to the public purse’.¹⁴⁹

Dowson’s final recommendations included the following: first, a complete survey of the land must be done, as it is necessary for any settlement. Second, all departments relating to land

¹⁴² Great Britain, *Special Report on the Progress of Iraq 1920-1930*, at 209.

¹⁴³ Ernest Dowson. *An Inquiry into Land Tenure and Related Questions: Proposals for the Initiation of Reform*, (London: Garden City Press, 1931).

¹⁴⁴*Ibid*, at 6.

¹⁴⁵*Ibid*.

¹⁴⁶*Ibid*, at 10-11.

¹⁴⁷*Ibid*, at 61-69.

¹⁴⁸*Ibid*.

¹⁴⁹*Ibid*, at 68.

tenure must be combined and coordinate their efforts. Third, settlement of title should be made on the basis of beneficial occupational use. Settlement should be preceded by ‘impartial’ local investigations undertaken by officers selected from the community itself. Finally, the state should retain its rights of ownership and so land should not be registered in freehold ownership, but rather ten-year leasehold tenancies.¹⁵⁰

Despite the rational basis of his report, Dowson’s most important recommendations were completely ignored. The new land tenure system, which was supposedly introduced on the basis of his report, was in reality undermined by Henry Dobbs, the High Commissioner at the time, who obviously had considerable influence on the Iraqi government. Dobbs, who was also the architect of Iraq’s tribal policy, disagreed with the report’s main recommendations.¹⁵¹ Dobbs’ objection, which was not published in the official report, emphasized that the position of the tribal shaikhs should be reinforced by allowing them more access to land.¹⁵² Dobb’s goal was clearly to empower a certain class of large landowners that would act as a bastion for the newly emerging British semi-colonial order. Dowson, on the other hand, strongly disagreed with Dobbs, stating that, ‘I do not myself think either simplification, or public peace or economic advance are to be realized by a deliberate policy of establishing a series of large holders as intermediaries in dealing with the mass small holders.’¹⁵³ It was ultimately Dobbs’ approach that prevailed, for it was the most politically expedient one after all.

The two most important pieces of legislation that were subsequently passed were the 1932 *Land Settlement Law*, which gave the government the power to settle land title disputes, and the *Law of Granting Land on Lazma Tenure*, which established a new category of landholding – *mīrī-lazma*. This ‘Lazma law’ specified that *lazma* tenure could be granted to any person who has enjoyed the usufruct of land if he could prove that the land has been cultivated for over a period of fifteen years preceding the date of settlement.¹⁵⁴ As mentioned earlier, customary *lazma* was a traditional form of customary prescriptive right. The new Lazma law effectively created a rigid positivist ‘customary’ law that was recognized by the state, and that conferred absolute ownership (*mūlk*), similar to *tapū*.¹⁵⁵ The purpose of passing such a law was to recognize a certain

¹⁵⁰ *Ibid*, at 76.

¹⁵¹ *Ibid*.

¹⁵² TNA. Dowson to Humphrys, 15 Jan. 1932. FO 371/16049, as quoted in Joseph Sassoon, *Economic Policy in Iraq 1932-1950*, (London: Frank Cass, 1987), at 161.

¹⁵³ *Ibid*.

¹⁵⁴ Warriner, *Land Reform and Development in the Middle East*, *supra*, ft. 140, at 148.

¹⁵⁵ *Ibid*, at 147.

customary law and tribal practice, and to supposedly ‘preserve tribal solidarity’.¹⁵⁶ It therefore seemed to be drafted as a compromise, suggesting that certain tribal rights needed to be acknowledged in law. In practice, however, its effects were the complete opposite, as what ended up happening was precisely what Dowson predicted in his report when he warned against merely ‘the passing of bills into law’ without ensuring that they were workable on the ground.¹⁵⁷

The *Lazma* Law and its strict interpretation eventually allowed for the newly emergent stratum of pump-owners to acquire ownership of lands in which they installed pumps, at the expense of the prescriptive rights of tribesmen.¹⁵⁸ This occurred according to some because of the bias and incompetence of those presiding over settlement courts, which often accepted proof of only one year of cultivation, instead of the expressly requisite fifteen.¹⁵⁹ The president of the Department of Settlements, Hasan Ali, for instance, highlighted that ‘with inexperienced land settlement officers, and with the doubtful integrity of the administration, influential people and shaykhs were able to get such grants by presenting even more tenuous evidence as proof of prescriptive claims.’¹⁶⁰ Although this was true, it was in fact the very nature of the *Lazma* Law that ensured that customary rights would be overridden as it was based on notions of property relations that were completely foreign to tribal customary law. As mentioned earlier, the traditional customary *lazma* was not only incompatible with such property relations, but did not recognize land as a commodity. It was the insertion of such foreign notions of property into this traditional prescriptive right and its rendering into a positivist form that ensured its use by the pump-owners and capitalist townsmen for their benefit. The law conferred title on whoever was able to make the land in question *productive* (in the context of capitalist relations) rather than as a mere *tribal* right per se. It is this fact (and not mere corruption and incompetence that was, as Warriner states, ‘not surprising’ considering the political circumstances), which ultimately explains the fact that proof of only one year of productive crop cultivation was sufficient

¹⁵⁶ *Ibid*, at 148.

¹⁵⁷ Dowson, *supra*, ft. 143, at 57-58.

¹⁵⁸ A very narrow interpretation of the definition of ‘usufruct’ was accepted by members of settlement courts. As Khayyat shows, members took advantage of the vague definition of usufruct in the legislation to favor a narrow meaning of ‘administrative usufruct’ rather than ‘actual usufruct’ of land. It was such an interpretation of the law that allowed pump-owners to gain title, although very rarely did actual cultivators bring their claims to court, as most claims tended to be between two pump owners or shaikhs claiming an ‘administrative’ right to usufruct land. Khayyat, Ja’far “al-Tatawur al-tārīkhi li-hiyazat al-ardh wa ‘laqāt al-mūlkīya fi al-rīf al-‘Iraqi” [The historical development of landholding and ownership relations in rural Iraq], *Al-Iqtisadi* (Baghdad, 1970), Vol. 11, No. 2, at 98.

¹⁵⁹ *Ibid*.

¹⁶⁰ Hasan Muhammad Ali. *Land Reclamation and Settlement in Iraq* (Baghdad: The Baghdad Printing Press, 1955), at 63-65.

evidence for the settlement courts to recognize title (entirely free of charge), while tribesmen whose ancestors lived on their traditional land for hundreds of years were denied any form of ownership or legal rights. In the end, as we will see, the law imposed *only* obligations on the *fellah*, stripping away all his rights.

A certain understanding of individual property rights relating to land and the importance it attaches to the function of surplus production was reflected in the parliamentary debates on the Lazma Law. The main concern was the definition of ‘lazma-holder’. After one member objected to the possibility that this law would override certain customary rights in his region (such as the ancient right of *naqsha*¹⁶¹), the member from Hila, Salman al-Barrak, responded by warning against making any peasant (fellah) a lazma-holder. He claimed that, ‘if we made each *fellah* a *lazma*-holder, we might as well wish peace upon the land [i.e. wish it farewell]... and if all Iraqis become *lazma*-holders...then the land would become a desert. For as long as there is nothing driving the *fellah*, then he would not cultivate [a thing]...’¹⁶² It was clear from the latter debates that the fellah was interpreted as being precluded from the definition of a lazma-holder in law from the very beginning. The law was ultimately passed unanimously in both houses, and this explains the manner in which the commodification of land was primarily contemplated as the only way to make land more productive – the application of capital on land was considered a necessary precondition to acquire its ownership.

The legal framework to settle land was therefore in actuality meant to make permanent a specific understanding of property relations – a ‘rule of property’ as Ranajit Guha called it¹⁶³– that was not only compatible with but also made to serve the capitalist system in toto. As one African legal scholar suggests land tenure reform in a colonial context plays a unique role as ‘the implication of tenure reform is that it represented a form of progressive transfer from one normative order to another’.¹⁶⁴ In our case, a ‘semi-feudal’ capitalist order displaced a tribal customary one. The law played a significant role in this process, which amounted to a transfer of

¹⁶¹ *Naqsha* (a word deriving from an expression denoting a camping ground) was an ancient tribal prescriptive right attached to individual plots of land that were originally acquired by means of personal toil or to those who have ‘broken the land and developed it’. Jwaideh, *supra*, at 338.

¹⁶² As quoted in al-Jawāhirī, Imād Ahmad. *Tārīkh Mushkīlat al-Arādi fī al-‘Iraq wa Dirāsa fī Tatawurāt al-‘Āma* [The history of land problems in Iraq c. 1914-1932], (Baghdad), at 274.

¹⁶³ Ranajit Guha. *A Rule of Property for Bengal: An Essay on the Idea of Permanent Settlement*, (New Delhi: Orient Longman, 1982).

¹⁶⁴ H.W.O Okoth-Ogendo. “The Imposition of Property Law in Kenya,” in Sandra Burman and Barbara Harrell-Bond (eds). *The Imposition of Law* (New York: Academic Press, 1979), at 155.

property rights, ironically and once again with the use of ‘customary law’.¹⁶⁵ A specific legal form was evoked ensuring the permanent dispossession of the tribesmen and peasant from his traditional land. The British, however, did not consider that this framework was greatly upsetting to the status quo, for as one commentator maintained, criticisms of the settlement committees were ‘commonly exaggerated’ as its members ‘created no rights, they [merely] recorded what rights they found to exist’.¹⁶⁶ The reality of such meandering in law nonetheless could not be any different. The new system of land settlement brought about the destruction of an already disintegrating tribal order, permanently displacing it with a modern capitalist ‘semi-feudalism’ that endured for another two and half decades until the revolution broke.

It is worth quoting Warriner who similarly refused to hold the British responsible for what occurred in Iraq. She wrote (in the distressing year of 1948): ‘land tenure is mainly a controversial subject because it has been linked with British administration, and its abuses attributed to British mistakes. The difficulty has been that the British influence *was only advisory*, and the Government did not control an administration efficient enough to carry out recommendations of expert advisors...’¹⁶⁷ I have already shown how the government did not follow the most important recommendations of the so-called experts, but what is more interesting is the assertion that the British advisory system did not in fact have any influence on realizing the intended policies on the ground. The record does not support such a claim. In fact, British advisors to the Ministry of Justice were giving legal advice on how to evict peasants from their lands, as the TCCDR did not contain a provision to allow for such an outright action, and an eviction was only legal under a TCCDR administrative order.¹⁶⁸

In one instance, a British advisor argued that it was possible to take a defendant to civil court in such a situation if the provisions of the TCCDR were inadequate to ensure the peasant’s eviction from the land! Not only does this contradict the supposed existence of a ‘duality’ in law and jurisdiction (supporting my previous argument above), but it also illustrates that the intention behind the law and its subsequent interpretation was clearly to support the landowners against the peasant. This advisor wrote a letter to the ministry of interior where he detailed such legal maneuvering: ‘If B wanted to evict G, he had to first make a [TCCDR] application on the basis

¹⁶⁵ Jwaideh, *supra*, ft. 115, at 350.

¹⁶⁶ Stephen Longrigg. *Iraq 1900 to 1950: A Political, Social and Economic History*, (Oxford: Oxford University Press, 1953), at 251.

¹⁶⁷ Warriner, *Land and Poverty, supra*, ft. 140, at 117.

¹⁶⁸ al-Jawahiri, *supra*, ft. 162, at 263.

that the latter has no right [referring to the new lazma law] to reside on the land...and request his eviction. If G did not have a deed to support his presence [on the land], an order would be issued against him. However, if he produced a contract to support his presence, then B would have to request [in civil court] for the annulment of the contract [under civil law] presenting his reasons and evidence, and once the contract is annulled, G would be considered as trespassing on the land'.¹⁶⁹ As al-Jawāhirī exclaims, a reader would probably be astonished by such instruction, as it plainly shows that British advisors were 'conspiring' with their Iraqi counterparts against 'the poor peasant' living in his 'miserable hut' to evict him from his land, in his own country.¹⁷⁰

Before moving on, one must mention the one piece of legislation that 'promised genuine serfdom for the peasant,'¹⁷¹ and which introduced a trend of further concentration of landlordism during the 'independence' era of Iraq – namely, the *Law Governing the Rights and Duties of Cultivators No. 28 of 1933*.¹⁷² This law rigidly defined the labour relations between cultivators and the lazma-owners of the farms (whether pump-owners or sheikhs). The fellah had an obligation under severe penalty of law to follow the demands of the farm-owner relating to the methods of cultivation (relating to the choice of crops, seeds, waters supply and harvesting) (Article 3 and 18). Whatever advances given to the fellah would be considered 'agricultural debt,' which would incur high interests and penalties if not paid on time (Article 10). If a fellah failed to pay his debt (which was impossible to repay in the first place) he would be prevented from leaving the farm, and could have his crops and hut confiscated and possibly destroyed by the farm-owner. Moreover, an indebted fellah was prevented from working elsewhere (Article 15). The fellah was held negligent under the law for 'virtually every disaster' that might befall the crop – something that cannot be controlled in the unpredictable Iraqi environment.¹⁷³

In this way, the fellah was consequently turned from a tenant-at-will with some freedom of action to a bonded serf tied to the land.¹⁷⁴ One former British official admitted that 'one is obliged to regard the fellah's rights as theoretical only,'¹⁷⁵ and that 'the fellah under the

¹⁶⁹ Advisor to the Ministry of Interior to the Ministry of Justice, No. C/1634, Baghdad, 1 June, 1931, as quoted in *Ibid*, my translation.

¹⁷⁰ *Ibid*.

¹⁷¹ Batatu, *supra*, ft. 41, at 133.

¹⁷² *Law Governing the Rights and Duties of Cultivators No. 28 of 1933*, Iraq Government Gazette no. 31(30 July 1933), pp. 315-323.

¹⁷³ Sassoon, *supra*, ft. 141, at 169.

¹⁷⁴ Warriner, *Land Reform, supra*, ft. 49, at 137.

¹⁷⁵ The meaning of a phrase such as 'theoretical right' might seem confusing and contradictory, but it's worth mentioning that this type of analysis was prevalent in colonial discourse regarding land

provisions of the present law, is doomed to perpetual indebtedness...[and is] in reality, reduced to the status of a slave'.¹⁷⁶ The law was drafted to the benefit of the large landholders, who with their political positions and seats in parliament ensured its passage into law, despite the opposition of a few members to it for its clear injustice towards the peasant.¹⁷⁷ It was this law (and its revisions) in combination with the TCCDR detailed earlier- that ensured that the tribal fellah, now living in extreme poverty, in perpetual debt and enduring serf-like conditions would eventually decide to leave the land and migrate to the urban cities in search for a better life.¹⁷⁸ It would furthermore contribute to his extreme affliction of a disease-ridden state, conditions which Michael Critchley, a professor of public health and social medicine at the Royal College of Medicine in Baghdad, described in a lecture in March 1954 in the following manner: 'It is not exaggerating to state that the average agricultural worker (*fellah*) is a living pathological specimen as he is probably the victim of ankylostomiasis, ascariasis, malaria, biharzia, trachoma, bejel, and possibly of tuberculosis also.'¹⁷⁹ It should by now be quite clear that this 'pathological specimen' was not only the product of the foreign capitalist forces that swept the country, but also the embodiment of its unequal relations through the very mechanisms of the law.

VI. How law underdeveloped Iraq: the necessity of law in the history of semi-colonialism

The history of land tenure and customary law that I have described above is plainly a narrative about legal transformation as much as it is about political, social and economic changes in the context of colonialism in Iraq. Nevertheless, historians of Iraq have never really taken the law seriously. The role of (colonial and semi-colonial) law in the transformation and the imposition of underdevelopment or what has been referred to as 'semi-feudalism' of Iraq is of vital importance to grasp the manner in which it happened, and yet most explanations tend to privilege a *purely* economic or political narrative, whether it is reliance on modernization theory, dependency theory or its critique of 'Political Marxism' a la Robert Brenner. Let us take one

tenure. Meek points this out when he wrote: '...the words 'in theory' or 'theoretically' have frequently been employed to square the presuppositions with facts. Time and again there appear such contradictions...' See C.K. Meek, *Land Law and Custom in the Colonies*, (London: Frank Cass & Co, 1968), at 12.

¹⁷⁶ TNA. 'Note on law by Webster, former inspector-general of agriculture' in FO 624/1428/7 (22 Dec. 1933), as quoted by Sassoon, *supra*, ft. 137, 169.

¹⁷⁷ See al-Jawahiri, *supra*, ft. 161, at 350.

¹⁷⁸ See *Why Labour Leaves the Land: A Comparative Study of the Movement of Labour Out of Agriculture*, (Geneva: International Labour Office, 1960), at 160.

¹⁷⁹ Critchley, A. Michael. "The Health of the Industrial Worker in Iraq," *British Journal of industrial Medicine* 12.1 (January 1955): 73-75.

example from the classic Marxist work of Hanna Batatu, who seems to view the law as of mere secondary importance to social and economic ‘forces’ in understanding the transformations that occurred in Iraq. In referring to the 1932 land policy and the land settlement law, he wrote the following, ‘This policy amounted to a legal recognition of a process that had been taking place for a good many decades in Iraq’s countryside: the usurpation by the shaikhs and aghas of the communal tribal domain, their disposition of weaker neighbors, and their encroachments on virgin state land.’¹⁸⁰ Considering Law No. 28 of 1933 he wrote, ‘...fortunately for [the peasant]...it has never been the custom in Iraq to enforce laws wholeheartedly, and *anyhow legal enactments could not in the long run have checked a movement that social reality itself impelled*’.¹⁸¹ First, it is clear that Batatu’s definition of law is narrowly defined as a ‘legal enactment’ of certain political and economic processes occurring in social reality that could only be considered effective if properly enforced. Furthermore, law is treated as merely auxiliary to such historical transformation. In other words, his definition is confined to an instrumental and functionalist understanding of law.¹⁸² But what is more interesting for our purposes is his suggestion that what happened in rural Iraq could have happened *without the law*. This is an astonishing assertion considering the prevalence of law in the overall historical narrative that I’ve described above.

Batatu seems to believe that law should be considered as being separate from the social and political processes of transformation in history. However, law is so much more complex and nuanced than he suggests, for as E.P. Thompson emphasized in his study of the Black Act of eighteenth century England, ‘law was deeply imbricated within the very basis of productive relations, which would have been inoperable without this law’.¹⁸³ In the same way, I would argue that the entire transformative process in Iraq described above and the imposition of a semi-feudal system of large landlordism (especially in the South and referred to as the *iqta* system) could not have occurred and would have been ‘inoperable’ without the law. Moreover, the law was a part of the processes of transformation from the very beginning, whether it was during the Ottoman period or afterwards when the British arrived. In this sense, the law is more than merely an instrument of class (or state) power or mere ideology (which of course it is), but returning to Thompson, ‘class relations were expressed, not in any way one likes, but *through the forms of*

¹⁸⁰ Batatu, *supra*, ft. 41, at 110.

¹⁸¹ *Ibid*, at 133, my emphasis.

¹⁸² See Robert W Gordon. “Critical Legal Histories”, (1984) *Stanford Law Review*, 36:57.

¹⁸³ E.P. Thompson. *Whigs and Hunters: The Origin of the Black Act* (London: Penguin Books, 1975), at 261.

law; and the law... [therefore] has its own characteristics, its own independent history and logic of evolution.’¹⁸⁴

The role of law in analyzing Iraqi history therefore must not be dealt with as ancillary to other ‘forces’, for the fact that law is a part of the superstructure does not preclude its significance in relation to the economic base. The law might not be determining *per se*, but it is surely structurally and ideologically pertinent to the transformation in question, especially when it comes to the colonies and I would argue even more so in the semi-colonies, like Iraq. As Peter Fitzpatrick has argued, ‘law and state have a role that is more structurally central and structurally enduring in the third world,’ that is, in the colonial and semi-colonial context.¹⁸⁵ This is because it is the law that ensures that the traditional mode of production is preserved and kept somewhat intact *within* a capitalist system, which if left to its own devices would completely destroy it. In other words, since these two modes – the traditional and capitalist – cannot be integrated ‘naturally,’ they must be integrated into ‘an operative combination’ by law and the policies of the state.¹⁸⁶

The Iraqi economist Mohammed Oboosy has argued that the underdevelopment of Iraq emerged from the ‘primitive and semi-primitive methods of production,’ which in turn caused the economic structure to become overly ‘inflexible,’ further afflicting the economy with scarcities, ‘bottlenecks’, and ‘retarding’ any development plans.¹⁸⁷ If one were to extend our analysis into this economic argument, it becomes clear that a study of the law would certainly explain *how* this structural inflexibility was initiated, extended and maintained in Iraq on the ground. An extensive analysis of law in these circumstances of underdevelopment must be taken more seriously and given its proper due if one intends to get a complete understanding of the transformative nature of colonialism and imperialism in the semi-colonial Middle East.

¹⁸⁴ *Ibid*, at 262.

¹⁸⁵ Peter Fitzpatrick. *Law and State in Papua New Guinea*, (London: Academic Press, 1980), at 36.

¹⁸⁶ *Ibid*.

¹⁸⁷ Mohammed Jawad Oboosy. “A Study in the Theory of Economic Underdevelopment With Special Reference to Iraq,” *Middle East Economic Papers*, 15:2 (Beirut: American University of Beirut, 1958) at 136, 148.

VII. Conclusion

This chapter was generally an attempt to put the law at the center of the early history of socio-economic and political transformation of Iraq. The British imported certain colonial administrative and legal techniques from the North-Western Frontiers to secure their imperial interests and produce a semi-colonial Iraqi state. In so doing, they constructed an unstable positivist duality in Iraqi state law, which divided the country into two legal jurisdictions, one for the townsman and another for the tribesman. This in turn brought about the invention of a unique and modern tribal and customary law. Moreover, this duality, alongside a British land tenure policy, which institutionalized capitalist relations of production, contributed to some enormous changes in the countryside, structuring deep inequality in Iraqi society. First, it created a specific class of shaikhs who would become dependent on British patronage for their power, while their tribesmen were transformed into bonded serfs. Second, it ensured that land would be concentrated into the hands of a handful of landowners, contributing to the making of a highly exploitative (semi-feudal) capitalist system of production, and eventually forcing many of these miserable peasants to migrate into the slums of the urban cities and become wage earners. It is therefore quite clear from the narrative above that without the British uses of the law and certain legal techniques and instruments, most of these structural changes would not have emerged in the way that they did.

Chapter 2: A Brief History of the 1936 Labour Law & The Formative Years of the Early Iraqi Working-Class Movement

I. Introduction

I will now shift the historical narrative from rural Iraq to the city of Baghdad to give a sense of the formative years of the Iraqi working class and its early movement. The main task of this chapter is to contextualize and historicize the labour law of 1936, and to argue that it was partly passed as a concession to the working class due to their pressures and initiation of strike action. I will then examine the provisions of the labour law and explore its limits. Although this piece of labour legislation was meant to pacify the movement and was drafted in such a manner that heavily constricted workers' collective action, its provisions would eventually be appropriated into the discourses of both the early and the later labour movements. It was continuously used as a reference point and integrated into workers' demands until the end of the monarchy.

The labour law was appropriated as a rhetorical tool by the working class' (counter-hegemonic) movement to legitimize their demands. It had a specific ideological function in relation to the movement that was 'educative', which contributed to the expansion of their class-consciousness. In other words, the labour law did exactly the opposite of what it was intended to do in that rather than pacify or appease the workers, it actually expanded and broadened their class-consciousness. Although the early labour movement believed that legal reform was possible and looked to the incipient Iraqi state to provide the necessary reforms to address their concerns, there was within the next decade a radical shift towards a more revolutionary approach, which put emphasis on structural change rather than mere reform. The suppression of the early labour

movement would eventually allow for communist ideas to become popular among the majority of workers in the next decades.

II. The formative years of the Iraqi working class movement

Legality was a contested space in the semi-colonial state. The law was more than just an instrument in the hands of the ruling class. Rather, it was continuously contested and occasionally appropriated by the workers in their struggle against the state and in their imaginings of a democratic future Iraqi polity. In this way, the first comprehensive labour law passed in Iraq in 1936 cannot be explained in isolation from the previous years of intensified strike activity that culminated in a general strike in 1931. The 1931 general strike (the first of its kind in the country¹⁸⁸) opened the door for the eventual passing of labour legislation in 1936. This is significant because it highlights that the formation of the early working class on the ground occurred in conjuncture with legal changes that they had a part in shaping. The laws of the Iraqi state should not therefore be seen as merely legal enactments passed from the top by legislative bodies or the executive, but rather were often shaped in reaction to the actions of those who expressed themselves on the streets. I intend to therefore intentionally displace and shift focus from the agency of ministers or opposition leaders, towards those workers who were organizing in the factories and demonstrating on the streets.

The emergence of the labour movement in Iraq begins with the establishment of the first organization that advocated for workers – *Jam'iyat aṣḥāb al-ṣinā'a* (translated as the 'Artisans' Association'). The *Jam'iyat* was officially formed on July 26, 1929, around a month after the Law of Associations of 1929 was passed, legalizing the formation of 'associations'.¹⁸⁹ It was one of the first organizations that represented and tirelessly advocated for workers' rights, and in the

¹⁸⁸ There were strikes before 1930, in particular in 1922, 1923, and 1924 at the railways that called for the freedom to form associations and arguably led directly to the 1929 law of associations. Nonetheless, these strikes were still ineffective in uniting workers and confined to the workplace. See Majid Salmān Hussein. "al-Haraka al-'umāliya fi al-'Iraq: dirāsa fi itijāhāt al-siyāsiya," [The Labour Movement in Iraq: A study in its political trends," Basra University, Iraq Scientific Journal, Issue 19, January 2015, at 388.

¹⁸⁹ Kamāl Muzhir Ahmed, *al-Ṭabaqa al-'umāliya al-'Iraqiyya: al-takkawwn wa bidāyāt al-ḥaraka* [The Iraqi Working Class: Its formation and the beginnings of its movement], (Baghdad, Dar al-Rashid, 1981), at 123. Ahmed's book is one of the few works that details the early formation of the working-class movements using primary sources and interviews. He explicitly critiques the historiography (in particular al-Hasani) for ignoring the early history and formation of the Iraqi working class.

short period of its existence became one of the most respected labour organizations in the country. At this point in Iraqi history, trade unions in the common meaning of the term did not yet exist. The *Jam'īyat* was more of a hybrid between a trade union and a guild.¹⁹⁰ There was certainly a more radical element of workers within its ranks, represented by the majority of its membership, the railway workers. This was what gave the *Jam'īyat* certain characteristics of a trade union.¹⁹¹ This also differentiated it from its counterpart organizations, such as the Shopkeepers' Association and the Barbers' Association, which were closer to professional associations or craft guilds. Still, as Iraq was largely an agricultural country and industrialization was slow at the time, one could not really say that there was a fully industrialized or 'proletarianized' working class as of yet. The workers did not differentiate their interests from the artisans and small business owners. The *Jam'īyat* was therefore in reality an alliance between the petty bourgeoisie (artisans, small business owners) and the industrialized workers (railway and oil workers, and factory workers, such as the tobacco workers).

The Ministry of Interior was reluctant to accept the *Jam'īyat*'s application for a license, but it eventually accepted the application, and the organization was legally instituted. Elections were subsequently held and the founder of the organization, Mohammad Sālih al-Qazzāz was elected as its first president.¹⁹² al-Qazzāz, a mechanic and a descendent of a silk tradesman, is regarded as Iraq's first labour leader.¹⁹³ He came from a comfortable middle class background, which allowed him to gain a broad education and eventually worked several government jobs. He joined the 'Artisans' Office' in 1917, and for several years took night classes at the School of Commerce in Baghdad.¹⁹⁴ al-Qazzāz was considered fairly educated for someone of his generation - fluent in several languages, including English, Turkish and Urdu. Despite this background, he identified himself as a 'worker.'¹⁹⁵ He was nonetheless clearly closer to the artisans of the petty bourgeoisie. Politically, he was a liberal (rather than a Marxist), and a

¹⁹⁰ Ahmed argues that the organization had a workers' platform rather than an artisan character. *Ibid*, at 144. The fact is that the leadership was composed of artisans (petty bourgeoisie), while the majority of the members were workers. In that sense, these associations should not be regarded as worker-led per se, even though their platform is certainly genuinely worker-oriented. See Sbāhī, Azīz. *'Uqūd Min Tārīkh al-ḥizb al-Shīw'i al-'Iraqi, al-Juzu' al-Awal* [Decades from the History of the Communist Party of Iraq, volume 1], (Damascus: Manshourāt al-Thaqāfa al-Jadīda, 2002), at 76.

¹⁹¹ Ahmed, *supra*, ft. 189, at 144.

¹⁹² *Ibid*, at 140.

¹⁹³ Batatu, *The Old Social Classes, supra*, ft. 41, at 296; Farouk-Sluglett, Marion, and Sluglett, Peter, 'Labor and National Liberation., the Trade Union Movement in Iraq, 1920-1958', *Arab Studies Quarterly*, 5, 2, 1983, at 147.

¹⁹⁴ Ahmed, *supra*, ft. 185, at 133.

¹⁹⁵ Interviews conducted by Ahmed, *ibid*, at 133.

nationalist.¹⁹⁶ He took the plight of the workers as his own and fought for them like no other leader in Baghdad at the time. For this reason, the workers respected him and considered him one of their own – their representative in the political and international arena.

The formal goals of this novel organization were detailed in its internal documents, which explicitly avoided any indication of political aims and used language that implied the cultivation of education and reform.¹⁹⁷ The main reason for this vague language was its attentiveness to the necessities of getting certified by the authorities, which were reluctant to give out licenses due to fears that any form of politicization, especially of an organization with such a wide base, would be a threat to the state. In any case, the *Jam'īyat* was indeed a reformist organization merely seeking economic and legislative reforms.¹⁹⁸ al-Qazzāz insisted on this narrow goal stating that this organization was founded to 'defend the rights of workers and *kafihīn* ('toilers') who were unable to voice their demands, and to fulfill their interests' within the confines of the law.¹⁹⁹ There was therefore no attempt at this point to connect the problem of labour to the capitalist and semi-colonial structures of the Iraqi state, and the workers consciously avoided turning their labour struggle into a political one. This reformist approach, as will be shown later, was starkly different from the later revolutionary (communist-influenced) years where the workers regarded their struggle as principally a political one. It was assumed that once the state gained its independence that it would be able to advance legislative reforms that would solve the problems faced by the working class.

The influence of the early Marxists and socialists should not be overlooked, as they were naturally allied with the *Jam'īyat* at the time. In fact, Marxist-influenced intellectuals, such as Mahmoud Ahmed al-Sayed, Hussein al-Rahāl and Abdullah Jadou' had a strong impact on workers at the time, and enthusiastically supported al-Qazzāz and his organization.²⁰⁰ Most of these educated intellectuals gave weekly public lectures on workers' rights, and other pertinent topics. They also edited and wrote for the working class press.²⁰¹ Despite its financial difficulties, the *Jam'īyat* organized massive social and illiteracy programs, developing an entire system of support for the poor and laboring masses.²⁰² Physicians opened a free medical clinic for the poor,

¹⁹⁶ *Ibid*, at 134.

¹⁹⁷ *The Internal Rules of Jam'īyat aṣḥāb al- ṣinā'a*. See Appendix 1, Ahmed, *ibid*, at 241.

¹⁹⁸ Ahmed, *supra*, ft. 189, at 142.

¹⁹⁹ *Ibid*.

²⁰⁰ Sbāhi, *supra*, ft. 190, at 119

²⁰¹ Ahmed, *supra*, ft. 189, at 145

²⁰² *Ibid*.

and lawyers took workers as their clients *pro bono*.²⁰³ The emergent Iraqi state was unable to provide these basic services for the majority of laboring and working classes, who were in a desperate condition. It was no wonder that the membership of the *Jam'īyat* grew rapidly, and within one year of its founding, it boasted a membership of 3,000 workers.²⁰⁴ Branches surfaced all over the country – in Basra, Nasiriya, Hila and other cities.²⁰⁵

The role of the early working class press²⁰⁶ was an important space in developing workers' class-consciousness. While the government press constantly attacked the working class and its leaders, the working class press allowed the workers a space to communicate amongst themselves, as well as to articulate their grievances, expressing their plight. Moreover, it was within its pages that novel and modern ideas were disseminated to the workers. The inaugural issue of a newspaper entitled *al-Āmil* ('the Worker') addressed the workers in the following manner:

O Iraqi Worker: This is your newspaper that carries your honorable name in its breast. And it is your literary weapon, which you have the right to treasure in your sustained struggle to claim your trampled rights and defend your cause, which is a part of the workers' cause in the Arab World. It is your crying voice that will be heard throughout the world, so that they know that you are alive and aware of your injustices; aware of the loss of your rights; aware of the responsibility towards yourself and towards your brothers [...] Propose what you think would be useful to the worker, from your opinions and ideas – and say with it - always and forever: this is our motto...WORKERS OF THE WORLD UNITE!²⁰⁷

Here, one could certainly notice the influence of Marxist and socialist ideas as the more radical intellectuals wrote or edited most of the working class press. It was the first time that the phrase, 'workers of the world unite' appeared in Iraq, but soon it recurred elsewhere.²⁰⁸ This was a clear turning point for the working class as it showed that the a movement was emerging that was ready to organize this class to better its conditions.²⁰⁹ The leftist novelist and intellectual, Mohammed Ahmed al-Sayyed wrote an article for the same issue of *al-Āmil*, where he ends by

²⁰³ *Ibid.* al-Qazzaz stated that there wasn't a workers' conference or meeting that was not significantly attended by lawyers. See Ahmed, *Ibid.*, at 235.

²⁰⁴ See *al-Āmil al-Ārabi* July 5, 1930, as referred to in Ahmed, *ibid.*, at 145, 136.

²⁰⁵ Ahmed, *supra*, ft. 185, at 145.

²⁰⁶ These were newspapers written for and by workers, such as *al-Āmil* ('The Worker').

²⁰⁷ *Ibid.*, at 160. My translation – the last sentence was printed in the middle of the page in large font. See *al-Āmil*, Baghdad, Issue 1, July 8, 1930.

²⁰⁸ Other newspapers that used this phrase at that time include, *Nida' al-'Umāl* (The Worker's Call) (1930); *Majalat al-Shabāb* (The Magazine of the Youth), and finally *al-Ahālī* (1932). See al-Kadhimī, Naseer Said; *Musāhama fi Kitabat Tarīkh al-Haraka al-'Amālīya fi al-'Iraq hata 1958* ('An attempt in writing the history of the workers' movement in Iraq until 1958'), (Damascus: Centre for the Research of Socialist studies in the Arab World, 1991), at 65.

²⁰⁹ *Ibid.*, at 66.

claiming that the only way the worker could receive all his rights is if all the associations and unions united under an umbrella organization ‘to strive for the introduction of special legislation for the protection of their rights.’²¹⁰ The working class press, therefore, cultivated and spread these ideas of unity and organization to pressure the state for the passing of labour legislation.

III. The Railway Strike of 1930: the workers’ ‘school of struggle’

It was the massive general strike in 1931 against the *Municipal Fees Law*, which increased taxes by threefold, which may be regarded as the moment that the question of labour was irrevocably forced into the national and political sphere. This general strike, which quickly turned into a national one, attracted around 8,000 workers and artisans, and 3,000 oil workers.²¹¹ It was however the preceding railway strike of 1930 which created the active momentum for the massive general strike. The years between 1929 and 1933 were very difficult years in Iraq and in the world. The Great Depression led to a crisis in Iraq, especially since its economy was completely dependent on the capitalist market and Britain. The Iraqi government laid off public sector workers from ministries, and passed a law to reduce the salaries of pensioners.²¹² However, the wages of British workers were untouched, and only a few foreign workers were let go.²¹³ To raise revenue, the government began increasing taxes. This had a very detrimental impact on workers, farmers, artisans and small business owners. Foreign companies, such as the IPC, however, were relieved from these tax obligations.²¹⁴ In fact, the government even lowered the IPC’s tariffs.²¹⁵ The tax increases were the main vehicle for social mobilization in the cities as every part of the Iraqi commoner’s life was affected. However, the seeds of urban working class discontent were actually sown several months earlier in the railway strike of 1930.

The Iraq Railways, which were still under British ‘executive control,’²¹⁶ laid off a vast number of workers on the pretext of the need for restructuring.²¹⁷ This was followed by

²¹⁰ *Ibid.*

²¹¹ Phebe Marr. *The Modern History of Iraq* (Westview Press: Oxford, 1985), at 53.

²¹² *Muhathir Majlis al-Nuwāb* (1930), (The Debates of the Council of Ministers: the meetings of the year 1930), at 266-272, 354.

²¹³ Ahmed, *supra*, ft. 189, at 174.

²¹⁴ *Ibid*, at 176.

²¹⁵ *Ibid*, at 177.

²¹⁶ Batatu, *supra*, ft. 41, at 269. The railways became national property in 1936. It was partly British-owned (half of its capital of over £ 4,000,000 in gold was assigned to Britain in 6 percent preferred stock, while Iraq only had RS.45.85 lakhs of preferred stock, the rest of her share being in deferred

significantly lowering workers' hours, which, in turn, meant the lowering of wages.²¹⁸ The *Jam'īyat* began organizing against these measures, and used the working class press to publicize their grievances.²¹⁹ Another matter in dispute was the unequal manner in which the Directorate treated British workers compared to Iraqi workers – for example, a British worker's salary amounted to that of 150 Iraqi workers.²²⁰

This dire situation led the *Jam'īyat* to call for a strike, which commenced on December 30, 1930. Around a thousand railway workers assembled in the courtyard of the station in west Baghdad.²²¹ Management eventually made promises to meet their demands and the workers returned to work.²²² This event was one of the first strikes of its kind – in terms of size, organization and results.²²³ It soon became clear that the promises made were empty ones. Management was not genuine about meeting any of the workers' demands and continued to lower workers' hours. A second strike was called, which attracted more workers, who gained the sympathy of the Baghdadi public.²²⁴ The opposition and nationalist newspapers strongly supported the strike and this broadened their support by the Iraqi public, a pattern that would remerge in future labour strikes.²²⁵ The Iraqi government was clearly threatened by the widening support of the strike, and eventually requested the Directorate to look into the workers' demands.²²⁶ This pressure compelled management into accepting and signing an agreement, which ensured the layoff of all non-expert foreign workers and the payment of all workers' wages 'without exception'.²²⁷ The working class and nationalist press presented this resolution as a

stock. See Ernest Main. *Iraq: From Mandate to Independence*, (London: George Allen & Unwin, 1935), at 111.

²¹⁷ Ahmed, *supra*, ft. 189, at 184. In fact, the number of workers was gradually reduced from 8,129 in 1926 to 4,000 in 1931.

²¹⁸ al-Humeid, Shahab Ahmed. *al-Thawra al-Sāmita: Idrāb Baghdad 1931* (The Silent Revolution: The Baghdad Strike of 1931), (Baghdad, n.p.), at 30.

²¹⁹ *Ibid.*

²²⁰ Ahmed, *supra*, ft. 189, at 183.

²²¹ *Ibid.*, at 185.

²²² *Ibid.*

²²³ See Sassoon, *supra*, ft. 141, at 185.

²²⁴ Ahmed, *supra*, ft. 185, at 189.

²²⁵ *Ibid.*, at 192.

²²⁶ *Ibid.*, at 193.

²²⁷ Iraq National Archives, Files of the Monarchy, file number: D/14, as referred to in Ahmed, *ibid.*, at 194 (My translation).

victory for the workers²²⁸, and this further strengthened the *Jam'iyat*'s reputation, attracting more workers into its ranks.²²⁹

This episode was an important victory for the workers, as they grew bolder and confident in their ability to collectively organize and to bring some changes into their labour conditions and their lives. Despite the fact that management eventually breached the agreement with the complicity of the government barely two weeks after it was signed, it would still be inaccurate to treat this strike as a failure or as being 'ineffective.'²³⁰ The reality was the opposite as the Iraqi workers learned important lessons from these experiences, in particular the effectiveness of their unity and the weapon of the strike. It was no coincidence therefore that less than a month after the strike, a petition signed by over a thousand workers was submitted to the government asked for 'the rapid provision of a labour law to protect the rights of workers.'²³¹

The Iraqi communist historian, Azīz Sbāhī describes these successive railway strikes as being analogous to *madrasa nidhālīya* or 'a school of struggle' that had a significant impact on the development of Iraqi working class consciousness.²³² Strikes have a very significant impact on the development of class consciousness, as it is through collective action that workers grasp the power of their own agency and their ability to change their conditions. Workers broaden their consciousness, recognizing the role of the state and specifically the law in maintaining their oppressive conditions. They experience their own empowerment through collectively organizing to bring change into their lives, and they begin to identify with their fellow workers as a class based on their shared experiences. V.I. Lenin described the transformational character of strikes in the following manner: "a strike...*opens the eyes* of the workers to the nature, not only of the capitalists, but of the government and the laws as well...The workers begin to understand that laws are made in the interests of the rich alone; that government officials protect those interests; that the working people are gagged and not allowed to make their own needs; that the working

²²⁸ The headline of *Al-Istiqlāl*, April 6, 1931 read: "The workers return to work after they succeed in their demands."

²²⁹ Ahmed, *supra*, ft. 189, at 195.

²³⁰ Marr, *supra*, ft. 212, at 52.

²³¹ *Al-'Iraq*, January 21, 1931 as referred to in Ahmed, *ibid*, at 187.

²³² Sbāhī. *Uqūd*, *supra*, ft. 191, at 118. This is probably borrowed from Lenin who used the term, 'school of war' to describe strikes.

class must win for itself the right to strike, the right to publish workers' newspapers, the right to participate in a national assembly that enacts laws and supervise their fulfillment".²³³

The railway strike of 1930 was the beginning of a prolonged process whereby the workers' eyes opened to the (direct) causes of their miserable conditions, especially discerning the role of the state and the law in sustaining these conditions. It also proved the workers' ability to organize collectively to bring about pressure for change. It was the first time that the Iraqi working class acted in a unified and organized way even though it was still in its early stages. Although it was surely this illuminating experience that led the workers to actively demand the government to pass a labour law to protect workers' right, it was in fact the massive 1931 General Strike that further kindled their capacity to connect their immediate labor conditions to the Iraqi state and its laws.

IV. The General Strike of 1931: the entry of the working class into the political arena

The intensity of the railway strike had a significant impact on the next episode of the early history of the Iraqi working class – the 1931 General Strike against the *Municipal Fees Law*. This event transformed the apparent setbacks of the railway strike into more concrete results cementing them further into the broader context of the early nationalist struggle. The general strike lasted for fourteen days bringing Baghdad to a complete halt. It was described by British officials as 'a frenzy' and 'a fanfare of ruffraff',²³⁴ while the Iraqi historian and chronicler Abdul Razzāq al-Hasani captured the feelings of the Iraqi plebian when he called it 'the silent revolution of the people.'²³⁵ As mentioned earlier, the government hastily passed a law in June 1931 increasing municipal taxes by threefold. Debate in Parliament was overridden by PM Nuri al-Saīd, and the law was ultimately passed after its third reading.²³⁶ The law itself was bordering on the absurd as it affected everyone from the laboring masses. Not one craft, industry or profession was spared. A revised scale of around 119 different taxes was levied on all aspects of everyday

²³³ V.I. Lenin, "On Strikes," in *Collected Works*, Volume 5 (Moscow: Progressive Publishers, 1960 [1899]), 310-19, my emphasis.

²³⁴ al-Humaid, *supra*, ft. 219, at 14

²³⁵ Abdul Razzaq al-Hasanī. *Tarikh al-Wizarat al-Iraqiya* (the history of the Iraqi Cabinets), Vol. 3, at 152.

²³⁶ Ahmed, *supra*, ft. 189, at 204.

life.²³⁷ All workers had to pay a percentage from their income. The taxes were so high that it was impossible to expect any worker to pay them and still have enough for his daily needs.²³⁸

The *Jam'iyat* began to organize against this law, and after a petition led nowhere, a general strike was called on June 30, 1931.²³⁹ The Baghdadi public responded enthusiastically to this call and workers stopped working – all the coffee shops, artisan workshops, and pharmacies shut. Public transportation came to a complete halt. There was a deafening silence in the ordinarily busy streets of Baghdad.²⁴⁰ The government baffled by this unprecedented course of events responded with threats reaffirming the individual's liberty in operating his business, while cautioning that it would not allow anyone to 'threaten the freedoms of others' with their actions.²⁴¹ The government deployed the police (some on horseback) to the streets of Baghdad to intimidate people to get back to work.²⁴² The main demands of the strikers were not merely the annulment of the current law, but the reduction of the taxes in the previous law, coupled with the workers' demand for dealing with the issue of unemployment and the release of all those who had been imprisoned for striking.²⁴³

The leaders of the strike, including al-Qazzāz, Mohammed Makī al-Ashtārī²⁴⁴, Abdullah al-Badrī²⁴⁵ and others were all arrested for incitement under the Baghdadi Penal Code.²⁴⁶ Yet the authorities began negotiations with them in prison, where al-Qazzāz insisted that the annulment of the law was a precondition for ending the strike.²⁴⁷ The government made a promise that it would eventually revoke parts of the law, which the strike leadership ultimately endorsed. Nevertheless, the strikers, weary of empty promises, refused to end the strike that rapidly spread to other cities, including Basra and Nasiriya.²⁴⁸ It was at that moment that the strike was transformed into a much broader 'national movement,' that called for the fall of the government

²³⁷ *Ibid*, at 203.

²³⁸ *Ibid*.

²³⁹ *Ibid*, at 205.

²⁴⁰ Al-Humaid, *supra*, ft. 219, at 47.

²⁴¹ The statement could be found in *Sadā al-'Ahd*, July 6, 1931, referred to in Ahmed, *supra*, ft.189, at 207.

²⁴² *Ibid*, at 207, and al-Humaid, *supra*, ft. 219, at 49.

²⁴³ See *al-'Alim al-'Arabī*, July 9, 1931 as referred to in al-Humaid, *ibid*, at 67.

²⁴⁴ The leader of the Barbers' Association.

²⁴⁵ The leader of the Printers Union.

²⁴⁶ See al-Humaid, *ibid*, at 146 for the complete list of those arrested.

²⁴⁷ Ahmed, *supra*, ft. 189, at 208.

²⁴⁸ *Ibid*, at 209.

and the end of social injustice.²⁴⁹ The British High Commissioner described the anger on the street in a memo to London: ‘Republican cries have been openly raised in the streets ... there has been no sign of loyalty to King or support for the Government.’²⁵⁰ The government turned to repressive tactics to quell dissent and violence ensued, especially in Basra.²⁵¹ A Royal Decree amended Article 83 of the Baghdadi Penal Code making it a criminal offence for a gathering of five or more people in public.²⁵² Police armed with machine guns guarded ‘sensitive’ areas in the city, and the military was put on emergency alert.²⁵³

As King Faisal and Prime Minister Nurī al-Saīd were both abroad in Europe during the strike, the viceroy warned that if they did not return immediately, the general strike would most likely turn into ‘a great revolution.’²⁵⁴ So, Nurī decided to return to Baghdad, released the strike leaders from prison, and began to negotiate with them directly. The government ultimately agreed to rescind taxes on nineteen different groups of workers but refused to resign.²⁵⁵ Moreover, a statement was made in a government newspaper that directly addressed the workers, claiming that the government plans to “[m]onitor the conditions of labour...for the achievement of the workers’ well-being, and monitor the implementation of the provisions of laws relating to the organization of work.”²⁵⁶ The reality however was that Nurī blamed the strike on a ‘handful’ of ringleaders and ‘secret associations’, an obvious reference to the *Jam‘īyat* and other trade union associations.²⁵⁷ The 1931 General Strike was the first attempt by the Iraqi working class to directly confront the state using the economic weapon of strike action with the attempt to reform state policies and shape the law. The workers brought their specific labour concerns into the national and political arena. This explains why the parliamentary opposition felt that they had to rally behind them if they were to gain any credibility.

²⁴⁹ al-Hasanī, *supra*, ft. 236, at 143

²⁵⁰ TNA. Acting High Commissioner, Baghdad, to Secretary of State for Colonies, London, July 11, 1931. Delhi, National Archives of India, Baghdad High Commission File 7/4/22, Part II, as quoted by Farouk-Sluglett, M, and Sluglett, P, *supra*, ft. 194, at 148.

²⁵¹ For nearly two days, protestors were in control of Basra. The British under the guise of protecting British lives and property decided to send their forces to retake control of the city. This led to shots being fired into the crowd and the violent death of several protestors. The future secretary general of the communist party (the young Fahad) was one of those leading protests. In the mean time, the TCCDR was used by the government to exile some strike leaders and protestors from Baghdad and other cities. See *Muhadhir Majlis al-Nuwab*, (1931), at 253.

²⁵² Ahmed, *ibid*, at 210.

²⁵³ *Ibid*.

²⁵⁴ al-Hasanī, *supra*, ft. 236, at 146-147.

²⁵⁵ Ahmed, *supra*, ft. 189, at 211.

²⁵⁶ See the opening of al-Iraq, July 27, 1931, as referred to in Ahmed, *ibid*, at 212.

²⁵⁷ *Muhadhir Majlis al-Nuwab* (1931), at 47.

The narrative above refutes the analysis in the historiography that disregards the role of the workers in leading the strike, preferring the explanation that it was the parliamentary opposition that sustained the strike. Workers were generally presented as being led, influenced or organized by oppositional parties and interests. There has been no attempt to focus on the workers' own independent role in organizing against the state. A good example is Peter Sluglett's claim that the opposition joined the strike, because it was the only way that the cabinet could be ousted at the time, as there were no 'legal' mechanisms to do so in Parliament.²⁵⁸ Sluglett seems to suggest that it was in reality the party leaders who ultimately 'took charge' of and organized the strike, coordinating its spread into other cities, rather than the workers themselves. Even Hanna Batatu inexplicably remarks that the opposition party, *al-Ikha' al-Watanī* 'led' the 14-day General Strike.²⁵⁹

This type of analysis reduces workers' struggle to political maneuvering between oppositional parties and the cabinet, and neglects Iraqi workers' agency. The reality was the complete opposite – it was the workers and their leaders who planned, organized, executed and ended the 1931 strike. It was the workers and their leaders who were put on trial and imprisoned – not the leaders of the opposition. Although some MPs resigned after the strike broke, they did so for strategic purposes. Politicians took advantage of the situation. This was evident in the manner by which they politicized the strike in advocating for the necessity of overthrowing the cabinet rather than dealing with the specific underlying issues that concerned the workers.²⁶⁰ Abū al-Timman, on the other hand, could be considered as an exception; especially seeing that al-Qazzāz himself continuously consulted him during the strike.²⁶¹ However, his party did not have a leadership role as is generally assumed, for it lacked the necessary popular base needed to make a long-term contribution to the working-class struggle.²⁶²

²⁵⁸ Sluglett, *Britain in Iraq, supra*, ft. 87, at 149.

²⁵⁹ Batatu, *supra*, ft. 41, at 200. He also states that Abū al-Timman's *al-Hizb al-Watanī al-'Iraqī* had an 'initiator role' in founding the *Jam'īyat*, and that it had an 'active guidance' role in the 14-day general strike of 1931. Even though this has some truth, the focus always seems to be steered away from the workers themselves. See Batatu, *ibid*, at 295.

²⁶⁰ One merely needs to recall that al-Hashimi and al-Gilani were involved in drafting the first municipal fees law of 1926, and that they did not oppose the hiring of foreign workers when they were in power. In fact, al-Gilani made a statement in 1935 when he was a member of cabinet that 'there is no workers' problem in this country, because the majority [of people]...are farmers.' Ahmed, *supra*, ft. 189, at 229.

²⁶¹ Ahmed, *ibid*, at 227, 231.

²⁶² This party was so inextricably tied to Abu al-Timman's person (he was its major financier) that when he turned his back on it in 1933, it perished. Batatu, *supra*, ft. 41, at 200.

In that sense, even if the workers and the opposition were coordinating at times, it would be far from the truth to argue that the opposition led rather than guided certain aspects of the strike. The opposition did make an attempt after the strike to co-opt the labour movement. This occurred when the leaders of the *Ikha'* party approached al-Qazzāz with the suggestion that he re-open a permanent association under their auspices. al-Qazzāz refused the offer realizing that this new association 'would have put the labor movement under the control of the opposition leaders'.²⁶³ This was one reason why this general strike did not accelerate further into a revolutionary moment, for the so-called 'nationalist movement' was still under the clout of the (bourgeois) oppositional parties.²⁶⁴ The fact was that the *Jam'iyat* did not have a wide or comprehensive political program nor did it see itself as a political organization, but merely as a labour union with a narrow economic and social reformist agenda.²⁶⁵

The slow demise of the *Jam'iyat* began when the government instigated its campaign to shut it down soon after the strike ended by bribing some of their members, who in turn accused al-Qazzāz of rigging the elections of its administrative committee.²⁶⁶ Based on this fabricated accusation, the government ordered the *Jam'iyat* shut down.²⁶⁷ al-Qazzāz was arrested on allegations of rigging the elections of the *Jam'iyat*.²⁶⁸ At this point, there was an attempt to co-opt the working-class movement by manufacturing a complicit leadership and an alternative organization – *Jam'iyat 'Ummal al-Mīkanīk* (Mechanic Workers' Association). However, this tactic eventually failed as most workers refused to join this organization and instead called for the release of al-Qazzāz and the reopening of their union.²⁶⁹ After al-Qazzāz was released from prison, he succeeded in reclaiming this organization from its government-sponsored leadership by overwhelmingly winning the elections in 1932; after which he decided to merge it with the (now illegal) *Jam'iyat*, forming the *Itihād al-'Ummal fi al-'Iraq* (the 'Iraq Labour Union).²⁷⁰ This new trade union continued the same work that the *Jam'iyat* was known for²⁷¹, and in particular

²⁶³ Marr, *supra*, ft. 212, at 53.

²⁶⁴ See Editorial, 'Mūsāhama fī Kitābat Tarīkh al-Haraka al-Niqābiya fī al-'Iraq' [An Attempt at writing the history of the labour movement in Iraq], in *Thaqāfa al-Jadida*, Issue 39, August 1972, at 17.

²⁶⁵ *Ibid.*

²⁶⁶ Ahmed, *supra*, ft. 189, at 214.

²⁶⁷ *Muhadhir Majlis al-Nuwāb* of 1931, at 44.

²⁶⁸ Marr, *supra*, ft. 208, at 53; Ahmed, *supra*, ft.189, at 215.

²⁶⁹ Ahmed, *ibid*, at 221.

²⁷⁰ Sassoon, *supra*, ft. 141, at 256.

²⁷¹ TNA. 'Extracts from Iraq Police Abstract of intelligence No. 6 dated the 11th of Febuary, 1933'. FO 622/1/155. In one union meeting, al-Qazzaz described the utter contempt that some government officials had of workers, whom he said regarded them as 'inferior beings'. He said that 'these

continued to call for the provision of special legislation for the protection of workers' rights.²⁷² The Iraq Labour Union was permanently shut down by the government in 1935, and the labour movement remained underground, disorganized and fragmented until its revitalization by the communists in the 1940s and the 1950s.²⁷³

V. The appropriation of legality by the working class: the Labour Law of 1936 & its significance

The first piece of labour legislation in Iraq – Labour Law No.72 of 1936 —was passed by the al-Hashimi cabinet.²⁷⁴ The argument I will furnish here is that this law was significantly a product of working-class pressure from below. It should not therefore be analyzed in isolation from the strikes of 1930 and 1931 described above. Moreover, despite its unenforceability by the state, this law should be considered as a (partial) victory for the working class. It was the culmination of the 1930 and 1931 strikes described above that eventually pressured the Iraqi state to make these concessions. Although the main intention was clearly to slow down the momentum of the movement by (formally) capitulating to some of their demands, the effect was the complete opposite as this law ended up enhancing the workers' understanding of their rights, educating them to appropriate the language of legality into their struggle. As will be shown throughout this study, it was in fact this consistent appropriation and reinvention of legality, which made this law quite significant in Iraqi working-class history.

Even though the labour law was quite basic in its provisions and contents (it consisted of 6 parts and 39 sections), it was a close reflection of what the workers had been calling for in the

officials...should be made to understand their mistake...[and] made to realize that present day conditions in no way resemble those of the past'.

²⁷² Sbāhī, *supra*, ft. 191, at 121.

²⁷³ The exception was the spontaneous mass political strike initiated by cigarette and oil workers in response to Baqr al-Sidqi's military regime in March 1937. Archibald Clark Kerr wrote on the significance of these series of strikes in March of 1937 in the following manner: 'there has been a greater number of strikes in the last six months than probably in the whole history of the country' and that 'In general, it would appear that there is some growth of feeling...that labour is entitled to fairer treatment than it has received in the past'. TNA. A. C. Kerr, British Embassy, Bagdad to A. Eden, London, March 23, 1937. FO624/343 (1937). This illustrates the accelerated growth of awareness of the Iraqi working-class in the significance of collective strike action as an effective weapon in improving its immediate conditions.

²⁷⁴ Labour Law No. 72, Iraq Government Gazette, No. 20, May 17,1936, at 278.

past.²⁷⁵ It stipulated that ‘in every industrial undertaking, such special precautions as are reasonable to secure the safety of the worker shall be taken.’²⁷⁶ It made a provision for medical treatment for injured workers. It made a provision for a rest period of one hour, and ‘a rest period of at least 24 consecutive hours after each six days of work’. There was a provision for ‘ordinary leave’ with full pay of ten days a year, as well as, sick leave with pay for 15 days for each year. It explicitly forbade child labour.²⁷⁷ Moreover, it empowered the Ministry of Interior to set up a conciliation/arbitration body for the purpose of settling disputes between employers and workers. Finally, Article 23 (the core provision of this law) provided that workers had a right to form trade unions, ‘in order to care for their special interests, to spread the spirit of co-operation...between them, to effect improvements by educational, cultural, social and moral means to develop the industries in Iraq.’ Articles 24, 25 and 26 presented the procedures required to form and certify a trade union, and the holding of elections of the administrative committee of a trade union.²⁷⁸

Although it represented a turning point in Iraq’s labour history, the law was practically ineffective as the increasingly authoritarian government of al-Hashimi did not enforce or implement any of its provisions, especially Article 23 above concerning the recognition of the right to form trade unions.²⁷⁹ The social democratic National Democratic Party, which temporarily came to power in the fall of 1936 were adamant on the application of the provisions of the law, and furthermore passed some important amendments to improve it, the most important of which was limiting daily working hours to eight.²⁸⁰ Unfortunately, with the failure of their reform program, the labour law would remain in the books without being consistently applied.

However, even if the government endeavored to apply its provisions, the reality was that combined with the laws regulating strikes, it would have been nearly impossible to enforce its

²⁷⁵ Mansūr, Shāb Tūmā. *Al-Wajīz fī Qānūn al-‘Amal: Dirāsa Muqārana, al-Juzu’ al-Awal* [A brief comparative study of the labour law, volume one], (Baghdad: Sharīka al-Tiba’ wa al-Nashir al-Ahliya, 1965), at 30.

²⁷⁶ *Labour Law No. 72, supra*, Chapter 2, Article 2.

²⁷⁷ See TNA. CO 730/168/1. (1931) ‘Outline of a Law Limiting Hours of Work and Regulating the Employment of Women and Children’. This regulation was the first to be passed before the consideration of drafting of a comprehensive labour law. It is interesting how such ‘civilizational discourse’ surrounding the protection of women and children was considered the most important aspect of an ‘enlightened’ labour law and policy at the time, and which was satisfactory for the PMC in Geneva.

²⁷⁸ *Ibid*, Chapter 4, Articles 23-31.

²⁷⁹ Sassoon, *supra*, ft. 141, at 257.

²⁸⁰ See TNA. Clark to FO, 23 Mar, 1937. FO 371/20795, E 2417/14/93. A further amendment that year stipulated that workers were entitled to annual leave and sick leave with full pay. See Scott to FO, 26 Oct. 1937. FO 371/27096, E6573/14/93.

provisions. The Iraqi state learned its lesson after the General Strike of 1931 and quickly introduced legislation the next year that made it practically impossible to undertake collective strike action legally.²⁸¹ So, for example, a strike that was in any way seen as unconnected to a specific labour dispute or somehow politically motivated would be considered illegal. Moreover, the Minister of interior had to be given notice of a strike; in other words, spontaneous action was illegal. Picketing or spreading information that encouraged other workers to initiate sympathy strikes was also criminalized.²⁸²

As one British official admitted, trade unions or associations referred to in the law would be ‘subject to very close official supervision, and [so] it is unlikely that they will be allowed to attain any great political importance,’ and that ‘most of the...provisions are merely permissive. The decision whether or not these provisions are to be put into force will rest with the Minister of Interior.’²⁸³ Therefore, while the law granted the workers the right to organize, it also gave the Minister of Interior wide powers to arbitrarily cancel the licenses of unions. It was, in other words, the executive and not the judiciary that was the final arbiter on the interpretation of the law, and especially on workers’ grievances against the cancellation of these licenses.²⁸⁴ In that sense, there was very little room to maneuver within the law when it came and that was certainly one reason why the Labour Law was ineffective as it was already stripped of any teeth.²⁸⁵ It is no wonder therefore that Joseph Sassoon would write that the 1936 Labour Law did not have ‘any significant effect on the development of trade unionism...’²⁸⁶

My contention, however, is that a closer analysis of this law would suggest a very different conclusion: that despite its unenforceability, it had a unique significance and consequence for the labour movement, which was positive for the over-all counter-hegemonic

²⁸¹ See Article 4 of the ‘Law Relating to Maintaining Security during Strikes Number 70 of 1932’ published in the *Iraqi Gazette* #115, June 30, 1932. This law was annulled in 1959. See al-Saïd, Sâdiq Maḥdî. *Munāza‘āt al-‘Amal al-Jamā‘iya wa Hismaha* [Collective Labour Conflicts and their Resolution], (Baghdad: Mutaba‘a al-Ma‘arif, 1961), at 28.

²⁸² *Ibid.* The penalties for breaching this law were either six months imprisonment or the payment of a fine of no more than 20 liras.

²⁸³ TNA. FO 624/7/623 (1936): ‘Labour Law 407/IT36. Sgd C.H. Bateman, British Embassy, Bagdad, to Anthony Eden, Foreign Office, London; April 25, 1936.

²⁸⁴ See Fu‘ad Hanna Tellew. ‘Labour Unions in Iraq.’ (Unpublished Master’s dissertation, University of Southern California, Los Angeles, 1954), at 238-239.

²⁸⁵ It should be noted that the definition of ‘worker’ in the law was significantly narrow as it was defined in a manner that excludes government workers, who were in turn prohibited from striking for any reason. See Article 109 of the *Baghdadi Criminal Code* (the penalty was two years imprisonment or a fine or both).

²⁸⁶ Sassoon, *supra*, ft. 137, at 257.

struggle. Firstly, it should be noted that this law was primarily drafted so as to be presented as evidence of the Iraqi government's 'enlightened' labour policy, with the purpose of convincing the PMC that Iraq was ready for independence or in the words of Albert Thomas, Director-General of the International Labour Organization (ILO), its 'eagerness to co-operate fully with other nations of the world in the sphere of social progress'.²⁸⁷ An ILO representative was tasked to advise the Iraqi government and the newly formed parliamentary labour committee²⁸⁸ on the specific ratification process and adherence to certain international conventions, especially relating to the employment of women and children in factories.²⁸⁹ Moreover, an Iraqi delegation was sent to the ILO in Geneva to undertake enquiries concerning labour legislation. Based on this visit and proposals given by Mr. Thomas, a draft law was submitted to Parliament. Even before the law was passed, the Council of Ministers informed the High Commissioner F. Humphrys that the PMC should be informed that the recommendations were accepted in principle and would be applied to the new labour legislation. This 'civilizational' approach towards labour issues was common elsewhere in the Third World as the ILO spread its conception of 'industrial life' and 'social justice' to other parts of the world.²⁹⁰ In that sense, the labour law did play a role in the juridical construction or at least in the justification of Iraqi 'semi-peripheral sovereignty', which will be detailed in Chapter 3.

Yet, the argument in this chapter is that there was another (unintended) ideological feature to this law. The labour movement would put emphasis on the core principles of this law to

²⁸⁷ TNA. Albert Thomas, ILO, Geneva to Nuri As Saïd, PM of Iraq, Baghdad. 14th July, 1931. [9552]. CO 730/168/1. Iraq: Labour Conditions (1931). See 'Abdul Qadir Rashid, Secretary to the Council of Ministers to The Legal Secretary to H.E. the High Commissioner for Iraq, Baghdad, 3rd November, 1931.

²⁸⁸ This committee included a British lawyer, H.I. Lloyd, who was recommended due to his international legal experience with the Mosul Frontier dispute; *ibid*.

²⁸⁹ *Ibid*. In March 1933, the ILO sent a delegate, C.W.H. Weaver to Iraq to give an account of labour conditions in the country. He wrote a report entitled, "Impressions of a Visit to India, Iraq, Persia, and Turkey", *International Labour Review*, Vol.XXVIII, No.4, October 1933. After visiting some factories, he made the following conclusion: "[t]he fragmentary impressions of conditions of labour in Iraq that I was able to gather during a four days' stay in Baghdad were sufficient to show the need for a small labour department and for simple labour legislation even in a country at an early stage of industrial development...It is hoped...that the Government will succeed in carrying out its labour legislation programme as early as possible, both for the correction of existing defects and as a means of preventing abuses as industry further develops" (at 487). What was peculiar about this visit was that Weaver did not meet anyone from the labour movement even though he admitted that he was aware of their presence: "...I was unfortunately unable to get into contact with the leaders of these organizations. The Association of Mechanical Laborers of Baghdad [which at this point was headed by al-Qazzaz] is particularly active, and would appear to have a definite organization and programme." (p.484-485). Also, see Sassoon, *supra*, ft. 141, at 257.

²⁹⁰ See Guy Fiti Sinclair. *To Reform the World: International Organizations and the Making of Modern States*, (Oxford: Oxford University Press, 2017), at 82.

its fullest, using it as a rhetorical tool in every one of its lists of demands. If one would consider that the labour law was itself a product of direct pressure exerted by the workers (from below) on the state, it would make sense why they would later appropriate its language, for they interpreted it as *their* law or at least one which spoke to their aspirations. The workers were quite consistent, as shown in the above accounts of the 1930 railway strike and the subsequent 1931 general strike in their demand for a piece of legislation that adequately protected their rights. Moreover, by March 1931, a few months before the general strike, al-Qazzaz submitted a proposal for a draft labour law to the government with the hope of lobbying for exactly what was needed by the working class. There were clear parallels in this draft and the labour law that was eventually passed.²⁹¹ Consequently, it is not difficult to make a direct connection with what the workers and their unions called for on the ground and the piece of legislation that was passed in 1936.

Finally, the fact was that al-Qazzāz was in direct contact with the ILO as well as several international labour organizations in Europe.²⁹² He clearly had confidence in the principles of international law and its institutions and believed that the ILO would pressure the Iraq government to change its labour policy.²⁹³ He did not consider how these international institutions in fact contributed to the making of the semi-colonial Iraqi state, and in turn to the very conditions that Iraqi workers were suffering from. This was something that the successor communist-led labour movement would understand well. In any case, the young Iraqi labour movement made its presence felt on the international stage, and it was this relentless pressure put on the Iraqi state (domestically and internationally) that ensured that the basic labour law of 1936 would finally be passed four years after independence.

The Labour Law of 1936 could therefore be understood as a victory (albeit a partial one) for the Iraqi working class, even if the workers would spend the next twenty years fighting for its enforcement and application. It should be interpreted as a forced concession won by the workers from the semi-colonial state. It surely affirmed the success of the working-class movement in Iraq. The workers continued to assert their own interpretation of the law (beginning with the call

²⁹¹ 'A draft project of an Iraqi labour law submitted by Mohammed Sālih al-Qazzāz, the president of *Jamī'yat Ashāb al-Sanā'a*, to the Prime Minister and ministers of interior, justice, and economy and public works, dated 31/3/1931,' See Ahmed, *supra*, Appendix 3, at 268 for the full text.

²⁹² TNA. FO 622/1/155. Labour Organizations in Iraq (1933); Extract from *Sawt al Iraq*, 7th Feb 1933.

²⁹³ Al-Qazzāz for instance sent the internal regulation and constitution to the ILO asking the Director for his views and whether it should be amended to comply with international standards. Local Press Extracts, 6th February, 1933, 'The International Labour office, Geneva, makes Enquiries about Labour in Iraq', *Sawt al Iraq*. FO 622/1/155.

for its revision and enforcement) every time they went out on strike. It was through these *illegal* strikes and acts of civil disobedience that they ended up gradually bringing changes to the law.²⁹⁴ The labour law's gradual development as shaped by the pressure of workers throughout the years is evident by the eventual enactment of Law #36 of 1942, which permitted workers to organize legally, and Law #18 of 1954, which developed a detailed arbitration scheme to settle worker-management disputes, as well as, raised the minimum wage.

How then could this labour law (or law in general) be explained as useful to a counter-hegemonic struggle in a semi-colonial context? This is an interesting question, which will be revisited throughout this work. It is useful here to refer to Antonio Gramsci's conception of law in the context of his famous concept of hegemony. Gramsci contended that the ruling class does not solely use violence to assert its control, but mostly uses ideology to develop a hegemonic culture that is propagated until it becomes 'common sense' to all classes in society.²⁹⁵ Hegemony is how the working class identify their own interests with those of the ruling class. The law then is one instrument that the ruling-class uses to materialize its hegemony.

The law, for Gramsci, works coercively and consensually within the state apparatus. This has been referred to as the 'double face of the law.'²⁹⁶ On the one hand, the law secures the economic interests of the ruling class by force. On the other hand, it has an ideological function whereby it disciplines the subaltern classes in every level of social and private life solidifying their conformity. Gramsci approaches law by referring to it as the 'juridical problem,' which is "[...] the problem of assimilating the entire grouping to its most advanced fraction; it is a problem of education of the masses, of their 'adaptation' in accordance with the requirements of the goal to be achieved. This is precisely the function of law in the State and in society; through 'law' the State renders the ruling group 'homogeneous' and tends to create a social conformism which is useful to the ruling group's line of development."²⁹⁷

The main function of law for Gramsci is therefore its 'educative'²⁹⁸ function– the law disciplines and persuades all classes in society into believing that the current governing

²⁹⁴ See Chapter 4, 5 and 7.

²⁹⁵ See Antonio Gramsci. *Selections from the Prison Notebooks*, Hoare, Q (ed.), (New York: International Publishers, 1971), at 325.

²⁹⁶ Benney, M. "Gramsci on law, morality, and power," *International Journal of Sociology of Law*, 1983, 11(2), at 205.

²⁹⁷ Gramsci, *supra*, ft. 295, at 195.

²⁹⁸ *Ibid*, at 247.

establishment has a cohesive unity that renders it effective and efficient. Furthermore, the educative function of law could be understood when the subaltern classes are constantly being told what is legal and what is illegal. This, in turn, establishes the ruling class' views and values in society, crystalizing them as "common sense." As Duncan Kennedy explains, "[t]he idea of the legal and the illegal is something which, if you can manipulate it skillfully, you can use to exercise great power over people who believe it."²⁹⁹ This hegemonic power, then, generates among the subaltern classes a particular conception of the right way to live, authorizing 'a particular form of life.'³⁰⁰ The hegemonic function of the law, hence, allows for the naturalization, rationalization and universalization of the dominant ideology of the ruling class.³⁰¹

One could extend Gramsci's analysis of law to what has been detailed above in the context of the labour law's appropriation by the Iraqi counter-hegemonic movement. In other words, the 'educative' function of the law could go both ways and the labour movement was aware of this as its organic intellectuals³⁰² (a lot of whom were lawyers themselves) would use the labour law as a way to educate the workers on their rights. As will be shown throughout this work, the law would be utilized in such a fashion throughout the monarchial period even by the more radical communist-led labour movement, who did not cease to take the law seriously despite knowing that the real struggle lay outside the confines of the law. In this way, one could argue that although the law was always contested, this did not mean that it was a neutral arena of class struggle, for it was merely *one front* whereby the workers exerted their vision of the future. As Issa Shivji emphasized in his own study of the Tanzanian working class:

²⁹⁹ Duncan Kennedy. "Antonio Gramsci and the Legal System," *American Legal Studies Forum*, (1982), 6(1), at 36.

³⁰⁰ Buckel, S and Fischer-Lescano, A. "Gramsci Reconsidered: Hegemony in Global Law," *Leiden Journal of International Law*, 22, (2009), at 447.

³⁰¹ Litowitz, Douglas. 'Gramsci, Hegemony, and the Law,' *Brigham Young University Law Review*, 2000, No. 2, 515-551, at 522.

³⁰² Organic intellectuals are, '...directly related to the economic structure of their society simply because of the fact that "every social group that originates in the fulfillment of an essential task of economic production" creates its own organic intellectuals. Thus, the organic intellectual "gives his class homogeneity and awareness of its own function, in the economic field and on the social and political levels."' See Valeriano Ramos, "The Concepts of Ideology, Hegemony, and Organic Intellectals in Gramsci's Marxism", *Theoretical Review* No. 27, March-April 1982, <https://www.marxists.org>.

It is undoubtedly true that state and law ultimately serve the interests of the ruling dominating class. But this comes about in the process of complex social struggles. As a result of these struggles, undeniably the law comes to embody certain partial successes and concessions won from the dominated classes. But this should not be taken to mean that the law has no class character or that it is a neutral arena of class struggle. Neither law nor legality *per se* is in the interests of the oppressed classes. Rather, *it is the social struggles of the oppressed classes themselves which lend content to law and legality*.³⁰³

Hence, despite the fact that law was an ‘instrument of the ruling class’, more so in a colonial or semi-colonial context, it remained one (limited) locus of working-class struggle. This indicates that the law was malleable enough to be imagined by the workers in their visions of the future that they were struggling for – uniting them to move towards some form of ‘proletarian hegemony’.³⁰⁴ Consequently the very passing of the 1936 Labour Law *did* in fact have some impact on forging the working-class struggle ahead.

The appropriation of legality by the labour movement would reappear in the next decade when the communists would quite ingeniously use this (dead) law (while referring to the Iraqi constitution) to advance their counter-hegemonic struggle, as they knew the value of law in educating the masses. A good example is the secretary-general of the ICP, Yūsuf Salmān Yūsuf’s essay entitled ‘The Trade Union is the Motto of the Worker Today,’ published in 1944 in the communist paper, *al-Qā’ida* (‘The Base’), in which he stresses the importance of extending the labour movement’s use of the trade union to all sectors of the economy, so as to include all workers across sectoral lines.³⁰⁵ Calling for the creation of a unified trade union representing all workers in Iraq, he refers to the law as a tool that should be appropriated by the workers in their struggle: ‘it is necessary to include in the trade union movement all categories of workers, and for the word ‘trade union’ to be the slogan of the workers today...and [while carrying] *in their pockets the labour law* and the charter of one of the unions, so as to explain...[to their comrades] the benefits of the union and its necessity in workers’ lives ... and it should not leave the worker’s mind that their route is not furnished with flowers and basil, as their mission does not end when they submit their application nor when they are granted a license to establish a union, but they

³⁰³ Issa G. Shivji. *Law, State, and the Working Class in Tanzania*, (Portsmouth: Heinemann, 1986), at 241, emphasis added.

³⁰⁴ Bryan Palmer suggests that by focusing on the ‘ruptures and reformations’ of the law, one could examine its ‘reciprocities with resistance’, and this explains how it is remade by civil disobedience (that is, from without rather than within the law). Palmer, B. “What’s Law Got To Do With It – Historical Considerations on Class Struggle, Boundaries of Constraint, and Capitalist Authority,” *Osgoode Hall Law Journal*, 41.2/3 (2003):465-490. <http://digitalcommons.osgoode.yorku.ca/ohlj/vol41/iss2/16>

³⁰⁵ Yūsuf Salmān Yūsuf a.k.a. Fahad. *Al-Qā’ida*, Number 4 and 5, April 1944 in *Mu’alafāt al-Rafīq Fahad* [‘The Works of Comrade Fahad’], (Baghdad: al-Thaqāfa al-Jadīda Press), at 291-297.

have to bring to their union the majority of the workers of their industry... to educate them... [on] ... the union based on the charter and Labour Law No. 72..."³⁰⁶ Yūsuf believed that the Labour Law of 1936 had a role to play in the working-class struggle despite (and especially considering) the fact that it was not being enforced by the state, and so he asked that the workers keep the labour law 'in their pockets' to serve as reminder of their rights.

Here, the workers' appropriation of the ideological force of the law in their struggle had its advantages, although it also had its limits, for as will be shown later the Iraqi workers' struggle was a not a legal one per se. It was largely waged outside the confines of the law, as it was more a structural question of conflicting visions of social orders, which in the end legal reform could not address. However, this did not mean that legality was not ideologically pertinent for the workers in the assertions of their demands and their overall struggle. Although this continuous reference to the law and the use of legality was a powerful arsenal for workers' struggle, it also had its limits especially in a semi-colonial context, and this should not be overlooked. The colonial and semi-colonial state did not allow for too much elbowroom where law and legality became an arena of class struggle. This was quite different from the Western liberal state, where legality was continuously used as 'a modality for shaping relations between labour and capital'.³⁰⁷ The early Western liberal state found it essential to use the law to institutionalize conflict between employers and workers, while attempting to avoid violent repression as much as possible. The colonial or semi-colonial state, on the other hand, did not find it necessary to do so, and was instead more prone to use violence to suppress workers demands. The workers' struggle in Iraq was therefore mostly waged outside the law out of necessity.

VI. Conclusion

In this chapter, I detailed the history of the formative years of the Iraqi working class in Baghdad, while contextualizing the first labour law passed in the country in 1936. I argued that despite the fact that this law was not enforced by the state, it was in reality a forced concession given to the workers because of their unrelenting strike actions, in particular in 1930 and 1931. I then make the contention that the principles embedded in this law were later appropriated by the labour movement as it was denoted in nearly every lists of demands, even so by the later communist-led movement in the next decade. This fact illustrates that the law and its ideology

³⁰⁶ *Ibid*, at 294 (my translation; emphasis added).

³⁰⁷ See Eric Tucker and Judy Fudge. *Labor Before the Law*, (Oxford: OUP, 2000).

was a useful tool for counter-hegemonic movements in the semi-colonial context, as it had an educative function, expanding workers' class-consciousness by allowing them to understand their conditions in the overall semi-colonial capitalist system. In a sense, therefore, this chapter has shown that the ideology of the law provides those who are struggling against the entire social order with a language to articulate their demands, as well as, the imaginations of their alternative futures.

The demise of the *Jam'īyat* in 1935 and its reformist social-democratic vision permitted more radical and revolutionary ideas, which were merely in the margins previously, to emerge at the forefront of Iraqi working-class culture and politics. Communism was to become so widespread amongst the working class and Iraqi society that it organically evolved into an indigenous movement, while being entrenched into working-class culture and its political imagination. Although this is not the place to delve into a detailed history of the Iraqi Communist Party and its sophisticated organizational and political underground structures, as will become clear later, the party was not only a genuine 'Iraqi' party³⁰⁸ that represented all sectors of the population, but its popularity would soar as the struggle for national independence intensified. It is enough to say that once communism arrived in Iraq, it was difficult for it not to spread the way that it did, especially considering the socio-economic transformations described in Chapter 1 were gradually constituting extreme inequality in Iraqi society. Moreover, it was the manner in which the communists explained in everyday layman language the important connections between the economic and political character of the working-class struggle that was what made their approach persuasive and effective.³⁰⁹ As the chapters on the oil, railway and port workers will illustrate, the communists maintained that British imperialism *and* the social, economic and

³⁰⁸ The ICP was an indigenous party that was not in any way controlled from Moscow. It is true that its internal rules were organized in Marxist-Leninist fashion and the famed secretary-general Fahad was trained in the Comintern's University of the Toilers of the East in the 1940s. However, there is no evidence either by Iraqi, British or US intelligence of any financial or organizational ties with foreign parties or states. As Batatu makes clear after examining the documents used to prosecute communist leaders, '...there is no evidence that [the party] was propped up by the Comintern in any...way'. Batatu, *supra*, ft. 41, at 576. This did not preclude the fact that certain factions of the party looked to Moscow for guidance. Of course, the Iraqi government and the British tried their best to make these connections with the intention of delegitimizing the party and to spread the idea that foreigners were behind the people's uprisings, such as the *Wathba*.

³⁰⁹ Communism in the region would be articulated to the masses in a explicit anti-imperialist manner that was within 'the ideology of national liberation'. In other words, it was to be conceived in a specifically geopolitical manner, what Anne Alexander referred to as, 'communism as geopolitics'. This was not surprising considering the geo-strategic nature of the semi-periphery. Anne Alexander. "Communism in the Islamic World," in Smith, S.A. (ed.) *The Oxford Handbook of the History of Communism*, (Oxford: Oxford University Press, 2014), at 270.

political conditions of the working class were intertwined, and that therefore they must be dealt with together.

Chapter 3: The Making of Semi-peripheral Sovereignty in International law – A Doctrine of Independence for the Exploitation of Iraqi Oil

Oh dancers to the prospect of a new era
That contains all the old and ragged things
What is the difference between the Mandate
And its genitals on the body of Independence?³¹⁰

~ Mohammad Salih Bahr al-'Ulūm

The occupation of Iraq, [the imposition of] the mandate on it, the treaty alliance with it, and then its “independence” and entrance into the League of Nations; all this was done to secure the flow of the politics of the Black Liquid [i.e. oil] to the shores of British influence.³¹¹

~ Yūsuf Ibrahīm Yazbak

“...Iraq had now become a main centre of world power...[It] holds a key position in modern strategic thinking and ...her oil is held to be essential for the needs of the Western world...”³¹²

~ Sir John Troutbeck

I. Introduction

The aim of this chapter is to assess the role of international law in the formation of the Iraqi state, specifically the juridical construction of its ‘independence’ in 1932. I will describe the Iraqi experience of the Mandate system, and the institutions and mechanisms of the changing international legal order during the inter-war period. This analysis will elucidate the relationship between international law and imperialism in Iraq, and its impact on the lives of the Iraqi working class. It is important to understand exactly how the Mandate functioned in Iraq, and how it overlapped with British imperial policy, which reacted to nationalist claims. I will use the Iraqi experience as a lens to illuminate certain aspects of the workings of the mandate system in the semi-peripheral region of the Middle East.

³¹⁰ Muhammad Sālih Bahr al-'Ulūm. *Diwan Bahr al-'Ulūm* (Baghdad: Matba'at Dar al-Tadāmun, 1968), 1:59. As translated by Kevin Jones in ‘The Poetics of Revolution: Cultures, Practices and Politics of Anti-Colonialism in Iraq, 1932-1960’ PhD Dissertation, University of Michigan, 2013.

³¹¹ Yūsuf Ibrahīm Yazbak. *al-Nift Mūst'bid al-Sh'wb [Oil, the Enslaver of Peoples]*, (Damascus: Manshourāt wizārat al-Thaqāfa, 1990).

³¹² TNA. FO 371/110991. VQ 1015/82. John Troutbeck (British Embassy, Bagdad) to Anthony Eden (FO, London) December 9, 1954.

The British used certain instruments from its past colonial experiences reconstructing them in the context of the mandate system and the new international legal order emerging at the time. Most historians of Iraq have considered the Mandate merely within the context of the Mandatory power's actions – not taking into account the role of international law in enabling these actions. This is unfortunate considering the fact that it was the international legal order that was emerging during the interwar period that allowed the Mandatories the ability to manoeuvre in maintaining their imperial control. An analysis of the role of international law in the subordination of Iraq to imperialism has therefore been quite lacking. In focusing on the Iraq episode, I will detail the history of treaty-making, revealing the manner in which it was utilized in relation to the development of international law so as to illustrate the unique Iraqi experience within the Mandate system. I will turn to a detailed description of how Iraqi semi-peripheral sovereignty was constructed by the Permanent Mandates Commission in Geneva. I will end, with a focus on the narrative of oil concessions and agreements that would bring some important insights on the characteristics of Iraqi semi-peripheral sovereignty – a sovereignty that turned out to be more than a matter of granting Iraq its independence, but rather about controlling access to the region as a whole for economic exploitation, especially that of oil.

II. The principles behind the Mandate system under international law and the significance of the 'A' Mandates

The Mandate system of the League of Nations has its origins in the 1919 Paris Peace Conference after the end of World War I, which endeavored to establish a lasting peace, and settle the 'colonial question' in an orderly manner under the rule of law.³¹³ The Allied Powers, who at that point occupied all the German colonies in Africa, Asia and Oceania, as well as the Arab provinces of the Ottoman Empire, eventually came up with the idea of the Mandate system as a compromise between the 'liberal' internationalists and the 'imperialists,' who were still in favor of the old practice of annexation, whereby enemy territory was seen as 'booty' or 'legally

³¹³ The 'colonial question' refers to the manner by which European powers have approached the 'question' of the territories and peoples that were colonized. So, for example previous to the emerging of the international legal order in the twentieth century, European states saw themselves as 'civilized Christian nations' with the 'right to discovery'. In other words, they had the right to occupy 'uncivilized' nations under international law. The colonial question was therefore dealt with under international law in a certain manner that emphasized full and unqualified control, whether it was through occupation, subjugation, cession, and prescription or through bilateral treaties. See Ruth Gordon, "Saving Failed States: Sometimes a Neocolonialist Notion", 12 *American University Journal of International Law and Policy* 903 (1997), at 938.

disposable property to be acquired by victors as spoils of war.³¹⁴ These old colonial practices led to extreme violent exploitation and plunder despite being justified as beneficial to the native peoples.

The South African soldier-statesman General Jan Smuts (who was also a lawyer trained in Roman-Dutch law) was the first to propose a ‘practical scheme’ for the creation of a Mandate system based on international trusteeship in a pamphlet published in December 1918.³¹⁵ Smuts proposed a system of trusteeship based on Wilson’s Fourteen Points, specifically the principles of ‘non-annexation’ and ‘self-determination’. He saw the League as the ‘reversionary’ of these conquered Empires. The main task of the League was that of ‘nursing’ the ‘destitute’ peoples left behind ‘towards economic and political independence’.³¹⁶ Wilson based his final draft (the ‘Hirst-Miller draft’) that he submitted to the Conference on Smut’s plan, making several adjustments by expanding the mandatory idea.³¹⁷

Article 22 of the Covenant of the League of Nations reflected these ideas, providing that the Mandate system undertook a ‘sacred trust of civilization,’ so as to promote the well being and development of these colonies that were ‘inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world’.³¹⁸ The main goal was therefore the protection of native populations from abuse, pillage and exploitation, which was the consequence of ‘the unfettered discretion of sovereign states’.³¹⁹ It was this ‘gross disregard of the material and moral welfare of the natives’ that put the old system of formal colonialism in a moral crisis, forcing the Great Powers to re-conceptualize the ‘civilizing mission’ into a new form.³²⁰ The

³¹⁴ Quincy Wright. *The League of Nations*, (New York: Greenwood Press, 1930), at 24. For the history of acquisition of territory under international law and its evolution See, Sharon Korman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice*, (Oxford: Clarendon Press, 1988), at 135.

³¹⁵ Jan Smuts. *The League of Nations – A practical suggestion*, (London: Hodder and Stoughton, 1918). For more on Smut’s influence on the League of Nations, See Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations*, (Princeton: Princeton University Press, 2009).

³¹⁶ Smuts, *ibid*, at 11.

³¹⁷ Smuts considered the peoples of Africa and Oceania as, ‘inhabited by barbarians, who not only cannot possibly govern themselves, but to whom it would be impracticable to apply any idea of self-determination in the European sense.’ Wilson, on the other hand, claimed that the mandatory idea should be applied to all the colonized; *ibid*.

³¹⁸ *League of Nations Covenant*, Article 22, para. 1-2.

³¹⁹ Antony Anghie, ‘The Heart of My Home: Colonialism, Environmental Damage, and the Nauru Case’, (1993) 34 *Harvard International Law Journal* 445–506; at 494.

³²⁰ Norman Bentwich, *The Mandates System* (London: Longmans 1930), at 4.

secondary goal was the promotion of the ‘well-being and the development’ of the native population.³²¹

To understand the innovative character of the Mandate system and its significance, one would need to deconstruct its legal principles and concepts. This would uncover its genealogies (underlying its continuities) with past colonial concepts and practices. As Aaron Margalith observed, the term ‘mandate’ is misleading and was the cause of ‘many a misconception’. Some regarded it as a ‘new conception of colonial administration and international law’.³²² Alfred Milner, the British statesmen who participated in the drafting of the Covenant, for instance, believed that they were breaking from the past when he said, ‘we are opening a new chapter in International Law’.³²³ Others believed that it was merely old (British) colonial policy and practice ‘internationalized’ by the Mandate system.³²⁴ Both these views if unqualified are doubtless inaccurate, for although the Mandate system was truly an innovation, it was not necessarily a complete break from past formations either. For it was theoretically created as a compromise after all.

Hence, to analyze the legal and political principles of the Mandate is necessary if one is to be attentive to the contradictory features that lie at the heart of this idea. The three main concepts of the Mandate system: the ‘trust’³²⁵, ‘guardianship/tutelage’ and the ‘mandate’ were technically borrowed from both European private law and British law.³²⁶ Nonetheless, these concepts have much longer histories, especially in the colonies.³²⁷ Edmund Burke referred to a ‘sacred trust of civilization’ in his passionate speech in the House of Commons on Fox’s India

³²¹B. Rajagopal. *International Law from Below: Development, Social Movements and Third World Resistance*, (Cambridge University Press, 2007), at 54.

³²² Aaron Margalith. *The International Mandates*, (John Hopkins Press, 1930), at 35.

³²³ Milner’s memorandum of March 8, 1919, Milner papers; as quoted in William Roger Louis. “Great Britain and International Trusteeship: The Mandates System” in Robin W. Winks (ed.) *The Historiography of the British Empire-Commonwealth: Trends, Interpretations and Resources*, (Durham: Duke University Press, 1966), at 300.

³²⁴ Campbell Uptegrove, *Empire by Mandate*, (NY: Bookman, 1954), at 5.

³²⁵ D. Campbell Lee argues that ‘it is not the Continental principle of Mandate that has promoted and produced the Mandatory system, but the English idea of Trust.’ D. Campbell Lee, *The Mandate for Mesopotamia and the Principle of Trusteeship in English Law*, (London: The League of Nations Union, 1921), at 13.

³²⁶ Margalith, *supra*, ft. 318, at 41, 45. The concept of trusteeship was borrowed from English common law and the law of trusts, while the concept of guardianship [and mandate] was borrowed from the civil law of the European continent. Civil law regimes do not have the trust, which is a common law conception.

³²⁷ For a good historical overview of the evolution of international trusteeship, see Chowdhuri, R.N. *International Mandates and Trusteeship Systems*, (The Hague: Martinus Nijhoff, 1955), pp. 13-36.

Bill in 1783.³²⁸ Similarly, US Supreme Court Chief Justice Marshall referred in his decision to the Indian natives as being ‘in the state of pupillage’ and characterized their relation to the US as that of ‘a ward to his guardian.’³²⁹

The main principles underlying the foundations of Article 22, in particular ‘non-annexation’, ‘international supervision’, and (economic) ‘non-privilege’, have also been used in the past in different colonial contexts.³³⁰ Perhaps the best example was the Berlin Conference 1884-85, which was an attempt to formalize colonial administration, setting down the rules and procedures for ‘international administration’ (exercised through sovereign rights) of the Congo, under the guise of ‘preservation’ and ‘well-being and improvement’ of native African tribes.³³¹ The purpose of the arrangement was to minimize inter-state rivalries and allow for free trade. However, it ultimately collapsed leading to the violent ‘African scramble’.³³² Of course, this international institution was in reality created merely to provide the *legal cover* to legitimize and justify European authority over Africa.³³³

If accordingly the main concepts and principles underlying the Mandate were not new, then what was it that made the Mandate system an innovation? It was certainly the profound turn to the ‘international institution,’ as a way to supervise the execution of the Mandatory’s obligations.³³⁴ Although this was attempted at the Berlin Conference, it was ineffective, mostly because of the lack of accountability. It was in other words (in theory) the addition of the principle of ‘international accountability’ that differentiated it from its predecessors.³³⁵ The Mandatory state was consequently considered ‘a protector with a conscience,’ which assumed obligations towards the native population and the ‘society of nations’.³³⁶ It acted according to ‘definitive principles’ that were publicly laid down in the instrument of the mandate, on behalf of

³²⁸ Lindley, M.F. *The Acquisition and Government of Backward Territory in International Law*, (London: Longmans, Green & Co, 1926), at 330.

³²⁹ *Ibid.*

³³⁰ Margalith, *supra*, ft. 322, at 46.

³³¹ Lindsey, *supra*, ft. 328, at 332.

³³² This arrangement although justified under international law eventually paved the way for the mass exploitation and genocidal killing of millions of Africans. See, Adam Hochschild, *King Leopold’s Ghost: A Story of Greed, Terror and Heroism in Colonial Africa*, (London: Pan McMillan, 1998).

³³³ Siba N’zatioula Grovogui, *Sovereigns, Quasi-Sovereigns, and Africans*, (University of Minnesota press, 1996), at 78, 85.

³³⁴ David Kennedy. “A Move to Institutions,” (1987) 8 *Cardozo Law Review* 841-988

³³⁵ Duncan Hall. *Mandates, Dependencies and Trusteeships* (Washington DC: Carnegie Endowment for International Peace, 1948), at 12.

³³⁶ Bentwich, *supra*, ft. 316, at 5.

and in the name of the League (rather than its sovereign right as was the case in the Berlin Act).³³⁷

The organs of the League were the Permanent Mandates Commission (PMC), the League Council and the Permanent Court of International Justice. The PMC, composed of ‘experts’ with previous experience in colonial administration was considered the ‘center of mandatory supervision’. This body was tasked with supervision through its scrutiny of the annual reports submitted by the mandatories, advising both the mandatory states and the Council on their international obligations.³³⁸ In fact, it is revealing that the majority of the members of the PMC were lawyers and jurists, for they saw their function in ‘legalistic terms’ and tended to take a ‘strictly legal approach,’ at times fusing the law with their administrative functions.³³⁹ In that sense, the PMC reflected the legal character of the Mandate system, which was entirely based on ‘legal norms and gave rise to justiciable legal obligations on the part of the mandatory’.³⁴⁰

Our narrative of the Iraqi mandate will remain focused on the PMC. This is to make the point that the new institutions of the Mandate were based on international law and cannot be explained otherwise as some scholars have done. Susan Pedersen in her recent book on the history of the Mandate system, for instance, completely disregards the role of international law in the mandate system and its legal character, including in her chapter on Iraq. She refers to ‘international law’ no more than a dozen times in her book, and merely in passing.³⁴¹ However, the reality was that PMC were constantly struggling with international law, for they were aware that they were *making* international law in their sessions. In that sense, it is impossible to understand Iraq’s emergence as an independent sovereign state without assessing the changing dynamics within international law and its order. The story of modern Iraq is accordingly a story of international law.

The Mandate system was classified based on the stages of development of each territory compared to the European ‘standard’: the ‘A’ Mandates were designated as the territories of the former Arab provinces of the Turkish Empire, which were said to have ‘reached a stage of development where their existence as independent nations can be provisionally recognized,

³³⁷ *Ibid. See Wright, supra*, ft. 314, at 23.

³³⁸ Wright, *ibid*, at 137-138.

³³⁹ Anghie, *Imperialism, supra*, ft. 21, at 151.

³⁴⁰ *Ibid* at 153.

³⁴¹ Susan Pederson, *The Guardians: The League of Nations and the Crisis of Empire*, (Oxford university Press, 2015).

subject to the rendering of administrative advice and assistance by the Mandatory until such time as they are able to stand alone'.³⁴² The 'B' Mandates were designated as the territories of Central Africa, which were considered as requiring a number of years (perhaps decades) of tutelage under their Mandatories, who were in turn given wider powers for the administration of these territories. Finally, the 'C' Mandates were designated as the 'primitive' peoples of the Pacific, who were to be governed as part of the mandatory territory, considering their remoteness from the metropole and sparseness of their populations.³⁴³

Despite the obvious racial dimensions of such a classification, my argument in this chapter is that at the heart of such a classification was more a concern for geopolitics and economic questions of capital accumulation in the region (especially oil in the case of the Middle East). In other words, the 'A' Mandates were classified as such for reasons that were not primarily because Arabs were seen as actually being 'more civilized' than African peoples. The 'A' Mandates were carved out in the Near East for several reasons, such as to fulfill previous promises concerning independence made by the British, but especially for the necessity of appearing as though colonial exploitation of the old variety was *not* continuing there. It was also meant to be a laboratory for experimentation with the concept of sovereignty –searching for the proper legal 'ingredients' needed for the eventual construction of a non-European sovereignty that was specifically compatible with the geopolitical designs over the semi-peripheral Middle East as a whole and which ensured the continuous flow of capital and oil.

The main characteristics of the 'A' Mandates were that the wishes of the peoples as to the selection of their Mandatory power would be taken into account, as well as the Mandatory power's supposedly limited role of 'administrative advice and assistance' in its tutelage of the territories' 'provisional' independence. As will be shown, however, the reality on the ground was that the people's preferences in the region (typified by all out revolts in Syria, Palestine and Iraq against the Mandate system itself) were eventually disregarded, while the supposedly loose and limited supervisory structures were forcefully imposed on the region, contributing to the emergence of a semi-peripheral sovereignty in Iraq.

Many legal scholars have generally avoided any overall analysis of the 'A' Mandates, which were not only differentiated from the 'B' and 'C' Mandates, but also as between each

³⁴²*Covenant of the League of Nations*, 28 April 1919, 13 (1919) *AJIL Sup.* 128.

³⁴³ Margalith, *supra*, ft. 321, at 29.

other. The 'A' Mandates were generally regarded as 'special cases' that should be studied separately. Margalith, for example, emphasized that, 'although there are some important features that are common to all these territories, there are many others, not less important, which are peculiar to each area and which give to it a unique character; so that in order to understand clearly the political situation in the Near Eastern mandates each territory will have to be separately dealt with'.³⁴⁴ Nevertheless, the 'A' Mandates were in fact all connected and should be so considered, especially if one is to grasp the political, social and economic background of the region. Although I am merely concerned with the case of Iraq here rather than making a comparative analysis, I approach my analysis contextually in the context of the region, as this is the only way to comprehend the significance of the 'A' mandates, while identifying their distinct characteristics as they relate to international law.

III. The concept of the 'semi-periphery' & its significance to international law

What is meant by the 'semi-periphery' in this study? The concept of the 'semi-periphery' emerged from historical sociology and was famously coined by world-systems theorist, Immanuel Wallerstein.³⁴⁵ It is used here as an analytic tool to refer to those states that were free from traditional and formal colonialism, but still subject to informal imperial control. The concept already contains a certain elasticity that may explain why it is difficult to define, but it essentially denotes an 'intermediate' status of economically and politically weak states that nevertheless had a limited amount of agency and therefore mediated between centres of economic power, production and distribution, and underdeveloped zones that supplied raw materials.³⁴⁶ This intermediate role contains a unique historical specificity that must not be overlooked by international legal scholars. Wallerstein himself emphasizes that semi-peripheral states have 'special political properties'.³⁴⁷ This entails that its juridical and legal properties are likewise unique. What this study seeks to do is to contribute to the emerging literature in international legal scholarship that finds this concept very useful in describing the dynamism and uniqueness

³⁴⁴ *Ibid*, at 125.

³⁴⁵ See Immanuel Wallerstein. 'Semi-Peripheral Countries and the Cotemporary World Crises' (1976) 3 *Theory & Society*, at 461.

³⁴⁶ See Giovanni Arrighi. *Semiperipheral Development: the politics of Southern Europe in the Twentieth Century*, (London: Sage, 1985).

³⁴⁷ Immanuel Wallerstein, *World-Systems Analysis: An Introduction*, (Durham: Duke University Press, 2004), at 29.

of such ‘intermediate’ role in international law.³⁴⁸ The semi-periphery could be found in notions of the ‘semi-civilized’ in international law for instance, and this suggests that the concept of the semi-periphery has a juridical as much as an economic dimension and function. It is this notion of the ‘semi-civilized’ that is reflected in the ‘A’ Mandate designation in relation to the ‘B’ and ‘C’ Mandates. As Umut Özsü argues, taking the semi-periphery seriously, ‘...simply forces us to confront the reality that the international legal system is inseparable from a global capitalist order with a largely Euro-American infrastructure...’³⁴⁹ It is also inseparable from questions of geopolitics. The ‘semi-periphery’ is, in other words, the perfect analytic tool to elucidate the economic dimensions of certain juridical formations and this is the main task at hand.

There has been an unfortunate and ‘remarkable’³⁵⁰ lack of focus on the semi-periphery in international legal scholarship, in particular those scholars of the TWAIL variety. TWAIL scholars, who have been at the forefront of exposing how colonialism and imperialism are constitutive of, and at the very foundation of the history and discipline of international law, have approached international law based on a strict dichotomy between the periphery and the core.³⁵¹ They have as a consequence overlooked the role of the semi-periphery in the development of international law. Moreover, they have not made clear distinctions between the periphery and semi-periphery in relation to international law, in particular the Mandate system. As Duncan Hall correctly warns, to theorize the Mandatory system in the wrong historical and political context could lead to numerous errors, one of which is ‘obscuring’ the relationship between the mandate systems to other species of imperial governance.³⁵² Moreover, to assume that the ‘A’ Mandates were ‘special cases’ that should be distinguished from the overall system ‘minimizes the great importance of the Near East Mandates’. The ‘A’ Mandates should not be considered exceptional ‘special cases’, but rather ‘the main range itself,’ while ‘the African mandates were the lesser

³⁴⁸ See Richard S. Horowitz. ‘International Law and State Transformation in China, Siam, and the Ottoman Empire during the Nineteenth Century’ (2004) 15 *J World Hist* 445; Liliana Obregon. ‘Completing Civilization: Creole Consciousness and International Law in Nineteenth-Century Latin America’ in Anne Orford (ed.), *International Law and Others* (Cambridge: CUP, 2006); Turan Kayaoglu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire and China*, (Cambridge: CUP, 2015).

³⁴⁹ Umut Ozsu. “From the ‘semi-civilized state’ to the emerging market’: remarks on international legal history of the semi-periphery,” in Ugo Mattei and John Haskell (eds.) *Research Handbook on Political Economy and Law* (Cheltenham: Edward Elgar, 2015), pp. 246-259; at 258.

³⁵⁰ *Ibid*, at 246.

³⁵¹ For a good overview of the literature, See James Gathii. “TWAIL: A Brief History of its Origins, its Decentralized Network, and a tentative Bibliography,” 3(1) *Trade Law and Development*, (2011): 26.

³⁵² Hall, *supra*, ft. 335, at 12.

ridges branching off from it'.³⁵³ It is in this way that the semi-peripheral region of the Middle East could be considered as a (legal) laboratory, especially with regards to the concept of sovereignty.

Tony Anghie argues that it was the 'displacement and reconfiguration' of the *location* of sovereignty by international lawyers that allowed for the construction of a novel form of sovereignty situated within the international institution of the mandate and its processes.³⁵⁴ That is, the characterization of the mandatory territory as possessing 'latent sovereignty' gave the Mandatory power the space and legitimacy to penetrate the interior of the territory in question, considerably transforming its character and society.³⁵⁵ Anghie however did not consider how his analysis, which works well for the periphery (the 'B' and 'C' Mandates), would work for the semi-periphery (the 'A' Mandate), where sovereignty was conditional and expressly provisional, rather than (temporarily or permanently) postponed.

In this case then the question (from an international law perspective) becomes – why was there a need to have a situation where sovereignty *appears* to be provisional in the first place? How would the Mandatory power actually have 'complete access' to the territory if sovereignty were not fully suspended as in the periphery? The answer I think lies in the necessity for legal experimentation with this provisional sovereignty for the future geopolitical control of this oil-rich strategic region. That is, the aim of this experiment was to construct a sovereignty that *appeared* whole in international law, while the territory remained under the economic influence of the European powers. It was consequently an attempt to push the concept of sovereignty to its limits in international law, while preserving and serving the (economic and geopolitical) crux of imperialism.

I want to therefore suggest that this experimentation in Iraq (at the behest of the international institution) with the use of certain legal technologies (such as plebiscites, treaties, organic laws, and minority protection regimes) and certain legal reasoning and logic developed in Geneva, were essential for the manufacturing of a non-European sovereignty that was unique to the semi-peripheral Middle East – a *semi-peripheral sovereignty* that although allowed the newly 'independent' state to join the international society of nations, ensured that its sovereignty

³⁵³ *Ibid.*

³⁵⁴ Anghie, *Heart, supra*, ft. 319, at 494-495; Quincy, *supra*, ft. 314, at 500-08.

³⁵⁵ Anghie, *Imperialism, supra*, ft. 21, at 149.

remained *both* constrained *and* economically valuable at the same time. It is in this way that what emerged when Iraq became independent was not only a model for other states in the region, reflecting the manner in which imperialism remained embedded within the emergent international legal order, but it also contributed to the imperialist control of the entire region.

IV. Iraq as ‘model mandate’: the instrument of the treaty and its uses in international law

The British decision to invade and occupy Mesopotamia was primarily made to secure the route to India during the Great War. It was during this short period of British military occupation that a civil and legal administrative system based on the Indian Raj was established.³⁵⁶ A debate ensued between British officials in London and India; the latter hoping to annex it as a part of the Raj’s sphere of influence.³⁵⁷ Only following the devastating consequences of the 1920 Revolution, which was the categorical rejection by the native population of the imposition of the mandate (seen as a veiled form of colonization), did the British consider installing an Iraqi self-government. Following the defeat of the revolution through aerial bombardment of tribes and villages (with poison gas), the British turned to the idea of creating an outwardly national self-governed polity with institutions that would allow them to remain under ultimate control. The Hejazi Emir Feisal was chosen at the 1921 Cairo Conference as the new King of the incipient state.³⁵⁸ The British ensured his ascent to the throne, legitimating it through a sham referendum.

Although it was the principal aim of the British to find a way to adhere to the emerging international order (represented by Wilson’s Fourteen Points and institutionalized in Article 22 of the Covenant of the League of Nations), while establishing its hegemonic position under the new Mandatory regime, I would like to shift the focus from the Mandatory state’s actions to the role of the international legal order itself. Historians of Iraq tend to describe Britain’s approach of ‘indirect rule’ through introducing the treaty as the main reason for the supposed ‘success’ of the Mandate in Iraq. The British approach, described as a ‘masterstroke’ has generally been credited with the direction the Iraqi narrative took.³⁵⁹ It was, in other words, their pragmatic outlook, and the manner in which they brought their past experiences from other parts of the Empire that

³⁵⁶ See Ireland, *supra*, ft. 66.

³⁵⁷ Sluglett, *supra*, ft. 83, at 4.

³⁵⁸ See Aaron Klieman. *Foundations of British Policy in the Arab World: The Cairo Conference of 1921*, (London: John Hopkins Press, 1970).

³⁵⁹ William Stivers. *Supremacy and Oil: Iraq, Turkey and the Anglo-American World Order, 1918-1930* (Ithaca: Cornell University Press, 1982), at 78.

determined the course of events.³⁶⁰ Of course, such an argument is problematic in that it assumes Iraqis were not a part of this narrative. This is untrue, considering that Britain was in fact reacting to Iraqi nationalist claims in the first place.

What is more interesting for our purposes is the role of the international legal order and international law in this narrative, in particular the different interpretations of international law respecting non-European sovereignty. It is unfortunate that this part of the narrative has usually been neglected.³⁶¹

Barely a year after the 1921 Cairo Conference, the British decided to utilize the instrument that they were most familiar with in colonial contexts – the instrument of the *treaty*, so as to express their mandatory relationship.³⁶² Iraqi nationalists, who the British viewed as increasingly ‘dangerous’ and ‘irrational’, were vehemently opposed to any form of Mandatory relationship, demanded nothing less than complete independence. The first Anglo-Iraqi Treaty was eventually signed in 1922.³⁶³ The treaty was written in the contractual language of mutuality and reciprocity, skillfully reproducing the Mandatory relationship in a more ‘acceptable’ form, while deliberately avoiding any use of the term. The cornerstone of ‘indirect control’ in the Treaty was the requirement that the Iraqi government appoint British advisors at every governmental post. Ministers were required to consult with a British advisor on all courses of action before coming to any decision. The High Commissioner himself was the advisor to the King. This parallel British advisory system was generally considered as the backbone of the Iraqi state. Supplementary agreements ensured that key military, foreign relations, judicial and financial posts were held in British hands.

Although the whole point of the arrangement was to avoid the appearance of a Mandatory relationship, the Council of the League of Nations only approved the treaty, in September 1924 after it was confirmed as embodying the Mandate in ‘form and substance.’³⁶⁴ The treaty maintained British dominance of the new Iraqi state and its institutions, limiting the state’s

³⁶⁰ See Toby Dodge, *Inventing Iraq: The Failure of Nation and a History Denied*, (NY: Columbia University Press, 2003), at 1-41.

³⁶¹ See Pederson, *supra*, ft. 341.

³⁶² The Mandate text pertaining to Iraq was never officially ratified.

³⁶³ *Anglo-Iraq Treaty of Alliance, 1922, Cmd 2370*

³⁶⁴ See Quincy Wright, “The Government of Iraq,” (1926), 20(4) *The American Political Science Review*, 743, at 765. Wright regarded Article 22 of the League of Nations Covenant, the League Mandate and the Treaty *with* the Organic Law, as forming part of the constitutional documents of Iraq; *supra*, at 747.

constitutional structures. It was consequently intertwined with the 1925 Iraqi Constitution or Organic Law, enshrining wide executive powers and constricting parliamentary sovereignty, so as to allow the King and Cabinet (through the influence of the High Commissioner) to uphold the provisions of the treaty.³⁶⁵ For instance, Article 26(3) gave the King the power to override constitutional procedures by dissolving parliament and issuing ordinances that had ‘the force of law’ for the fulfillment of ‘treaty obligations’.³⁶⁶ Moreover, any measure pertaining to the treaty did not require the approval of parliament. Finally, the King had an absolute veto over all laws and ministerial orders.³⁶⁷ The Constitution, therefore, ensured that the entire relationship between the Iraqi state and Britain remained outside the constitutional order, wholly governed by the treaty, which was at that point emanating from international law and its order.³⁶⁸ This arrangement allowed the British wide room to influence the King and pressure him not to deviate from the treaty, and in turn British imperial policy.

To trace the evolution of treaty-making by the British in the context of international law would be useful so as to grasp the way this instrument functioned in the case of Iraq, and the nature of the emerging international legal order at the time. The British brought past colonial practices from their long experiences in colonial administration, in particular India and Egypt, to the Iraqi plane. The American international lawyer, Quincy Wright made such an observation, suggesting that the British tradition of colonial administration, which allows for the subordination of form to substance was developed in India and Egypt and imported to the case of Iraq: ‘If British administrators can make the government run the way they want,’ he wrote, ‘they are willing to dispense with the appearance of power’.³⁶⁹

The instrument of the treaty was used in the nineteenth century to create ‘native states’ or Indian princely states that were defined by a unique ‘quasi-sovereignty’ that was differentiated from international law. As Lauren Benton has shown, Foreign Office officials at the time were elaborating this treaty law (as well as other colonial legal instruments) as being a separate type of ‘imperial law’ that should be distinguished from international law.³⁷⁰ Several international legal

³⁶⁵ See Hooper, C.A. *The Constitutional Law of Iraq*, (Baghdad: McKenzie & McKenzie, 1928).

³⁶⁶ *Anglo-Iraq Treaty of 1930*, (Baghdad, June 30, 1930).

³⁶⁷ *Ibid*, Articles 62 and 63.

³⁶⁸ Brown, Nathan. “Constitutionalism, Authoritarianism, and Imperialism in Iraq,” *Drake Law Review*, Vol. 53 (2005): 936.

³⁶⁹ Wright, *supra*, ft. 360, at 748.

³⁷⁰ Lauren Benton. “From International Law to Imperial Constitutions: The Problem of Quasi-Sovereignty, 1870-1900”, *Law and History Review*, Vol. 26, issue 3, pp.595-619 (2008) at 599.

scholars, in particular C.H Alexandrowicz, have shown that during the nineteenth century, a universalizing positivist international legal order emerged replacing the previous more pluralist order, which was based on natural law.³⁷¹ This positivist order was based on the exclusion of all ‘uncivilized’ nations from the ambit of international law, which was defined as exclusively western and ‘civilized’. The ‘universal’ was hence ‘located in Europe,’ while ‘there was a shared willingness to apply [western] standards of political and legal practice universally as well as a readiness to deny admission to the international community to these states that fail to meet these required standards’.³⁷² This shift to positivism led treaties that were signed with non-European states to be interpreted to the latter’s detriment, as positivists ignored the circumstances in which these treaties were signed.³⁷³ Consequently, ‘the history of violence and military conquest which led to the formation of these treaties plays no part in the positivist’s approach to the treaty’.³⁷⁴ Therefore, in the case of the Indian princely states, the instrument of the treaty was utilized to exclude these states from the ambit of (civilized Western) international law and the society of nations.

It also led to the construction of the notion of ‘divisible sovereignty,’ which asserted that sovereignty could be held in degrees with full sovereignty reserved for the imperial power.³⁷⁵ In this way, these Indian princely states were given a certain degree of internal sovereignty and even considered as independent, although they lacked international personality and were excluded from the society of nations. Furthermore, Britain had the right to intervene and disregard their obligations under the treaty whenever they saw fit. This was a very similar arrangement to the Persian Gulf States, which also had signed treaties with the British government. These treaties similarly gave the Shaikhdoms internal autonomy, in return for the surrendering of their external sovereignty and the maintenance of British ‘paramountcy’ in the Gulf.³⁷⁶ The Gulf treaties were likewise differentiated from the ambit of international law. The tracing of the evolution of these

³⁷¹ C.H. Alexandrowicz, *An Introduction to the History of the Law of Nations in the East Indies* (Oxford: Calrendon Press, 1967).

³⁷² Gerry Simpson. *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order*, (Cambridge University press, 2004), at 246-247. Simpson argues that, ‘ultimately, these late-Victorian practices...can be viewed as precursors to the current liberal anti-pluralist movement in international law’.

³⁷³ Anghie, *supra*, ft. 21, at 71.

³⁷⁴ *Ibid*, at 73.

³⁷⁵ Benton, *supra*, ft. 366, at 603, 601. Benton suggests that the manner that the princely states were governed tended to be overlooked, because they were quickly and clearly made subordinate to the British. See Mantena. *Alibis of Empire, supra*, for the ideological origins of the British approach of ‘indirect rule’ through the lens of its most well known legal scholar at the time, Henry Maine.

³⁷⁶ See al-Baharna, Hussein, *The Legal Status of the Arabian Gulf States*, (Manchester: Manchester University Press, 1968), at 84-90.

instruments within other colonial contexts emphasizes that ‘the politics of sovereignty within empires generated new legal practices,’ that I would argue did not entirely disappear after the emergence of the new post-war international legal order, as the very concept of sovereignty (as it relates to non-Europeans) was shaped by these practices.³⁷⁷

While the instrument of the treaty was utilized to exclude the non-European from international law and its order in the nineteenth century, in the case of Iraq, the treaty was brought in to do the opposite: to express the Mandatory relationship that would eventually create Iraq as a ‘sovereign state,’ and lead to its eventual membership in international society. My argument, however, is that the legal experiment that ensued in Iraq brought about novel legal practices (or refined old instruments, such as the treaty itself) ensuring that Iraq’s inclusion into international society would still be an exclusion. This exclusion, however, would now occur *within* the ambit of international law rather than without it. It is therefore ironic that the treaty was brought in so as to avoid using the Mandate directly but to do so indirectly (i.e. to exclude to include), and yet the inclusion of Iraq into the society of nations as will be shown below was constrained by a new treaty and by the imperialism embedded within international law (i.e. to include to exclude, so as to include to exclude *again*).

The 1922 Anglo-Iraq Treaty brought about some confusion as to the British proposal that the Mandatory relationship was to be expressed in treaty form rather than the mandate itself. This was because it created the ambiguous position, whereby the British had ‘a mandate for Iraq vis-à-vis the League, and not one vis-à-vis Iraq’.³⁷⁸ This was reflected in Lord Palmer’s speech before the Council where he said that ‘Iraq has advanced too far along the path laid down in Article 22 of the Covenant for the particular form of control contemplated in that article to be any longer appropriate...[t]he treaty and connected documents place the British government in a position vis-à-vis Iraq to discharge their obligations toward the League...’³⁷⁹ The Council, as mentioned earlier, approved the treaty as reflecting the mandatory relationship in substance rather than in form.³⁸⁰ The decision of the Council stipulated that the purpose of the treaty was ‘to ensure the complete observance and execution in Iraq of the principles which the acceptance of the Mandate

³⁷⁷ Benton, *supra*, ft. 340, at 618.

³⁷⁸ Wright, *supra*, ft. 314, at 60.

³⁷⁹ *Official Journal*, V, at 1314-15.

³⁸⁰ See “Iraq, Papers Relating to the Application to Iraq of the Principles of Article 22 of the Covenant of the League of Nations, 1925,” Great Britain, Cmd. 2317, in Wright, *supra*, ft. 310, Appendix II.

was intended to secure.³⁸¹ Although the mandate was not ratified, it remained the operative document, defining the obligations of the British government towards the League and its Covenant.³⁸² The PMC, which also had some doubts, eventually came to the same conclusion that a Mandate existed in Iraq despite this unusual arrangement.³⁸³ Similarly, although certain international lawyers had some misgivings maintaining that it was possible to argue that a Mandate did not exist in Iraq,³⁸⁴ most scholars were eventually convinced that not only was there a mandate in Iraq, but that ‘the form of the documents seem to comply more accurately with the terms of Article 22...than is the case with any other class A mandate’.³⁸⁵ Lindley, for instance, maintained that Iraq was a ‘sovereign state’ that was subject to treaty conditions and advice from British advisers and experts.³⁸⁶

The treaty provided that an Organic Law (a constitution) and an Electoral Law would be passed by a Constituent Assembly. Iraq was to maintain its *indivisible sovereignty* as a constitutional monarchy with a representative government.³⁸⁷ The instrument of the treaty was therefore used in this instance to distance Iraq from the mandate, while at the same time constructing a limited sovereignty in form, which would give Britain some control and indirect influence in the same manner that it did in India and Egypt. The difference here was that the sovereignty given was not divisible, but rather *indivisible with constraints* imposed by the treaty.

The instrument of the treaty remained a subjugating one even with the presence of (formal) indivisible sovereignty that allowed the ‘high contracting’ parties to come to a ‘contractual agreement’. However, my argument goes further to claim that subjugation and semi-colonialism was not only maintained by the instrument of the treaty, but also by the newly

³⁸¹ *Ibid.* Bentwich claims that the instrument is purposely referred to as a decision rather than a mandate with intention of avoiding the hated word. See Bentwich, *supra*, ft. 320, at 57.

³⁸² O.J., V, at 1217

³⁸³ P.M.C., Min, VII, 10-14, 123.

³⁸⁴ The other viewpoint that appears to have been prevalent at the time was that the Iraqi people were themselves unaware of the fact that their territory was mandated, and even if they were, they misunderstood the legal significance of the ‘mandate’ and confused it with actual ‘sovereign’ control (either because the legal niceties of the mandate were mistranslated or unable to be translated into the Arabic language). The catch-22 logic of this is evident: Iraqis were either ignorant of the facts or unable to grasp the facts due to their inferior culture. Moreover, this notion that Iraqis were somehow ‘tricked’ into the mandatory relationship is not only a reflection of the racist orientalist idea that assumes that Iraqis were unable to ascertain their own conditions in a critical manner, but also completely disregards the role of violence (whether the crushing the 1920 revolt that rejected the mandate or the use of martial law) in the imposition of the mandatory relationship.

³⁸⁵ Margalith, *supra*, ft. 322, at 125; Wright, *supra*, ft. 310, at 60.

³⁸⁶ Lindley, *supra*, ft. 328, at 257.

³⁸⁷ *Treaty with H.M. King Faisal*, 10 October 1922, Cmd 1757, 1922.

emerging international legal order itself, which was receptive to this old instrument of colonial administration. I am therefore proposing that the Iraqi arrangement should not be merely understood as a pragmatic reaction to a mere coincidence of events. It was no coincidence that the 1922 Anglo-Iraq Treaty was sanctioned by the Council as an international instrument that embodied the principles of the Covenant, *in turn becoming a part of international law* rather than differentiated from it as a form of imperial law as in the case of the nineteenth century. Hence, whether Iraq was granted independence in 1932 or several years later, did not make any difference, for the international legal order in place at the time only allowed for a specific (narrow) sovereignty to emerge, and this is what tends to be misapprehended by many scholars of Iraq and the Mandate system. I will return to this point when discussing the manner in which Iraq became independent or ‘emancipated’ from the mandate, and the unique semi-peripheral sovereignty that arose thereafter.

I want to end this section by focusing on one particular episode whose significance I believe tends to be overlooked by historians, but it elucidates the nature of the treaty and international law. This episode occurred when the treaty was stalled in the Constituent Assembly (the body that was tasked to pass the Iraqi constitution -or Organic law- and ratify at treaty in the same time). While the treaty was signed in October 1922, it was only ratified in June 1924. The circumstances of ratification were tense as opposition to the treaty was building not only on the streets, but also amongst nationalist political parties. When the King, who was trying to appeal to public opinion refused British advice to arrest the leaders of the anti-treaty movement, the High Commissioner, Percy Cox, took matters in his own hands when the King fortuitously fell ill with appendicitis to swiftly declare martial law, arrest nationalists and dissenters, closing down anti-treaty newspapers and banning political parties and trade unions.³⁸⁸

The Assembly ended up ratifying the Treaty (by a narrow majority of 13 votes) after it was forced to form quorum, as it was given the ultimatum to either accept the treaty or allow for the possibility of reverting to the Mandate, ‘in its original form’.³⁸⁹ The final wording of the resolution that was passed unmistakably implied the reluctance that was predominant: ‘This Assembly considers that many of the articles of the Treaty and Agreements are so severe that Iraq would be unable to discharge the responsibilities of the alliance desired by the people of Iraq.

³⁸⁸ For a detailed account of this episode See, Alī al-Wardī. *Lamahāt min Tarīkh al-‘Iraq*, volume 6:171-208.

³⁸⁹ Main, *supra*, ft. 216, at 85.

But it relies upon and trusts the honour of the British government...and is confident that it will not agree to burden Iraq nor to prejudice the aspirations of the people. It is only this confidence and trust on the part of Iraq which has induced the Assembly to accept the statements which have been received from His Excellency the High Commissioner on behalf of the British Government, to the effect that the British Government, after the ratification of the Treaty, will amend with all possible speed the Financial Agreement...'³⁹⁰

It was therefore through martial law that the instrument of the treaty and the Mandate was eventually ratified, and the legal structures that would govern the Iraqi state were legitimized. This fact tends to be overlooked as a mere tactic by the British to enforce the treaty, but there was surely more to it than that. As Chapter 6 will show, this episode reveals that semi-peripheral sovereignty could only be maintained through the violence of emergency law. In other words, these were in fact two sides of the same coin. The imposition of the Anglo-Iraq Treaty through martial law illustrates that 'civilizing' violence remained at the heart of the new international legal order and the mandate system.³⁹¹ In that sense, martial law would reappear throughout the period in question, in fact peaking after Iraqi independence in the 1940s and 1950s. This could be explained by the fact that martial law (and the laws of emergency) were already by now a regular feature of the institutions of the new Iraqi state, but also at the heart of the treaty relationship itself, and in turn, the mechanisms of the international institution of the Mandate and its order.

³⁹⁰ *Report by His Britannic Majesty's Government on the Administration of Iraq for the period April 1923-December 1924 at 22.*

³⁹¹ What is most interesting was the fact that the report submitted by the British government to the PMC in Geneva did not mention the use of martial law to force the Assembly to ratify the treaty. The report mentioned that '...the most disturbing feature was the agitation got up by the extremist party in Baghdad, led by a group of lawyers, against the ratification of the Treaty. They stopped short neither at the grossest misrepresentation, nor at the most flagrant intimidation to obtain their end...' The report continuously referred to an atmosphere gripped by fear of 'agitators' and 'coffee-loiterers' who were 'terrorizing deputies' and preventing them from ratifying the treaty. This apparently justified the police to clear the streets and restore order. Moreover, the report suggests that this 'anonymous intimidation...had produced an atmosphere of panic in which all argument suffered distortion.' In that sense, the report made it appear that any argument or debate on this issue was distorted by intimidation that was 'anonymous'. See *Report by His Britannic Majesty's Government on the Administration of Iraq for the period April 1923-December 1924*, at 21, 22

V. The manufacturing of Iraqi independence & the obfuscation of the economic dimensions of semi-peripheral sovereignty

I will end this chapter with a detailed analysis of how Iraq was construed as having reached independence through the processes of the Mandate system and under international law. This will allow for an analysis of the sovereignty that emerged, identifying its unique features in the context of the semi-periphery. To reiterate, my argument is that the semi-peripheral sovereignty that emerged when Iraq was proclaimed as an independent state was instrumental in creating the structures that perpetuated its subordination, including more broadly the control of the semi-peripheral Middle East and its integration into the markets of the world capitalist economy. It is for this reason that Iraq was considered a ‘model’ mandate for other states in the region, and this explains its significance as the proudest achievement of the Mandate system and the League.

The ‘A’ Mandates were drawn up so as to bring about an *interconnected economic block* in the Middle East whereby the Great (mandatory) Powers would have continual economic influence, specifically through access to oil resources. The fundamental purpose of this arrangement and the ensuing doctrine of semi-peripheral sovereignty was to ensure that an ‘independent’ Iraqi state was *voluntarily* – through the juridical forms of the ‘equality’ and ‘reciprocity’ embedded in contracts and concessions – providing access to its oil deposits for the world economy. Granting Iraq a form of sovereignty, justified under international law, would make this possible as long as the oil concessions and agreements were resolved *separately* (as was the case) in the interests of both the Mandatory power as well as the other Great Powers.

To substantiate this assertion, I will examine the PMC deliberations on both, the question of the admission of Iraq into the society of nations, as well as those relating to oil concessions and agreements in the region. The PMC reports reveal some interesting and contradictory views on the meaning of independence in the context of the Mandate system and international law. It will be evident that a closer look at the PMC discussions suggests that questions relating to the economic implications of independence were vital. By focusing on the economic dimensions of these discussions, it will be more apparent how the question of political sovereignty related to the

wider economic principle of ‘open door’, while the question of oil concessions was intentionally separated from the overall analysis. Although the economic dimensions of the Mandate system tended to remain in the background of the PMC discussions dealing with Iraq’s political sovereignty, my argument is that they were the most important and should be considered as its most significant characteristic. I will end this section by turning to the controversial discussions relating to the oil pipeline agreements that were meant to connect Iraq, Palestine and Syria with the purpose of getting Iraqi oil to the Mediterranean and ultimately to the world. This will illuminate the significance of Iraq’s sovereignty to the region as a whole. It is therefore my intention to reveal the crucial connections between the oil concessions and pipeline agreements, to the question of the sovereignty of Iraq in the broad context of the semi-colonial Middle East.

On September 1929, Britain agreed to support Iraq’s entry to the League of Nations and in turn its formal independence by 1932.³⁹² There was hence the need for a new treaty detailing the arrangements of the relations between the two states after formal independence. The ‘Anglo-Iraqi Treaty of Alliance’ was ratified in 1930 only after the most trusted and unscrupulous of the King’s court, Nuṛī al-Saīd headed the cabinet and used his infamous firm tactics to stifle any parliamentary opposition. The treaty’s contents maintained a ‘close’ alliance between the two states, providing that the British were bound to assist Iraqi forces when necessary. Although Iraq would finally attain control of its own military, it was obligated to receive training and equipment from Britain, and in return the Royal Air Force (RAF) would maintain two military bases rent-free by the government, while preserving its privileges and immunities.³⁹³

Iraqi sovereignty, according to the treaty, was therefore clearly conditional and riddled with constraints – especially the British right to move troops over Iraqi soil, and the continued employment of some British judges.³⁹⁴ As for the matter of British ‘advisors’ and ‘experts’, the treaty stipulated that this arrangement would remain intact. The economic dimensions of the 1930 treaty were intentionally vague and couched in military terms, so as not to excite any suspicion that the British were using their mandatory position for the purpose of capitalist exploitation.³⁹⁵ A separate financial annex attached to the Treaty ensured that the major national and strategic assets in the country, in particular, the Port of Basra and the railways ultimately remained under

³⁹² See Pederson, Susan. “Getting Out of Iraq – in 1932: The League of Nations and the Road to Normative Statehood,” *American Historical Review*, (2010): 975-1000.

³⁹³ *Treaty of Alliance between United Kingdom and Iraq*, PP 1929-1930, Cmd. 3627.

³⁹⁴ *Ibid*

³⁹⁵ Sassoon, *supra*, ft. 141, at 15

British administrative control despite partial transfer of legal ownership.³⁹⁶ In that way, the Treaty was not merely the basis for ‘serving Britain’s political and military interests in Iraq,’ but also provided ‘the means for protecting and widening British economic interests there’.³⁹⁷

The PMC³⁹⁸ was convening its sixteenth session in Geneva when it received word from the British representative of its intention to recommend Iraq for admission to the League of Nations.³⁹⁹ At the afternoon meeting, the chairman swiftly invited the PMC to determine the procedure that would need to be followed in the case of the emancipation of Iraq from the Mandate, as well as the independence of the ‘A’ mandate states in general. He stated that members would need to consider whether Iraq had reached the ‘degree of maturity’ that was acceptable for their independence.⁴⁰⁰ This would also include agreeing on the required guarantees to protect the interests of members of the League.⁴⁰¹ The PMC eventually decided that it would ‘welcome entry of Iraq to the League if and when certain conditions were fulfilled, in particular that it becomes apparent that Iraq was able to stand alone, and that effective guarantees be secured for the observance of all treaty obligations in Iraq for the benefit of racial and religious minorities and of the members of the League of Nations’.⁴⁰² In the mean time, the PMC would take the opportunity to question the accredited representative regarding Iraq’s ability to govern itself. Upon receiving this observation from the commission, the Council adopted a resolution on January 13, 1930, which requested the PMC to submit any suggestions that might assist it in coming to a conclusion.⁴⁰³

By the eighteenth session in June 1930, the PMC appointed a subcommittee (including members Van Rees, Rappard, Palacios, and Count de Penha Garcia) to study the *general* conditions that would need to be fulfilled rather than merely deal with the case of Iraq.⁴⁰⁴ Count

³⁹⁶ Main, *supra*, ft. 216, at 110.

³⁹⁷ Sassoon, *supra*, ft. 141, at 16.

³⁹⁸ The PMC only met twice a year to review the reports of mandatory powers and any petitions. It was generally kept under somewhat of a ‘tight leash’ by the Council as it did not have wide powers of conducting fact-finding missions or to hear petitioners in person, but they were still influential in that they were composed of ‘experts’ who assessed and scrutinized the annual reports of Mandatory powers. Their importance to this analysis is the fact that they were jurists, who were concerned with international law.

³⁹⁹ Pederson, “Getting Out of Iraq,” *supra*, ft. 392, at 982.

⁴⁰⁰ P.M.C. Minutes, 16th session, November 6-26, 1929, at 17-20.

⁴⁰¹ *Ibid.*

⁴⁰² *Ibid.*, at 203.

⁴⁰³ League of Nations, *Official Journal*, 1930, at 77.

⁴⁰⁴ P.M.C., Minutes, 18th session, at 43.

de Penha Garcia was appointed as *rapporteur*.⁴⁰⁵ He subsequently submitted his preliminary report, where he decided that questions pertaining to general principles of law should be dealt with first (i.e. the general conditions of admission) and not the particular case of Iraq.⁴⁰⁶ He went on to claim that ‘there is one primary and incontestable principle – that a mandate must terminate when certain conditions are fulfilled’.⁴⁰⁷ It was the ‘maintenance of peace’, he said, that was the primary factor in the development and termination of the Mandate.⁴⁰⁸ Moreover, he made it clear that this was connected to the preservation of the ‘continuing rights’ of the Mandatory powers: ‘...all States members of the League...were guaranteed by the mandatory power the peaceful enjoyment of a number of rights. Consequently, when a Mandate comes to an end this position must be adapted to the new state of affairs’.⁴⁰⁹

Finally, termination of the Mandate would depend on the welfare of the native population, as well as, the consent of the Mandatory power, which retained a ‘moral responsibility’ for the consequences of the termination.⁴¹⁰ The Count then moved to list the factors that needed to be considered to determine the extent of ‘maturity of the country judged...from a technical [and] juridical standpoint’.⁴¹¹ These were as follows: conditions of internal and external security, the social and moral conditions of the population, the spirit of existing legislation, economic and financial conditions, obligations arising out of agreements with the mandatory, obligations assumed towards members of the League, guarantees for freedom of conscience and religion, guarantees for the protections of minorities, guarantees for an adequate judicial system, guarantees for safeguarding the moral and material interests developed under the mandate regime, and lastly the adoption of the principle of economic equality to the new situation created by the termination of the mandate.⁴¹²

The preliminary report above demonstrates how the PMC were in fact *making* international law by formulating the conditions of sovereignty through the Mandate process that would later be applied to the case of Iraq. It was considered a *purely* legal question, which was distinct from the political and economic questions. It was in other words, a positivist analysis that

⁴⁰⁵ P.M.C., Minutes, 19th session, 153-156.

⁴⁰⁶ *Ibid.*

⁴⁰⁷ *Ibid.*, at 155.

⁴⁰⁸ *Ibid.*

⁴⁰⁹ *Ibid.*

⁴¹⁰ *Ibid.*

⁴¹¹ *Ibid.*, at 156.

⁴¹² *Ibid.*

emphasized neutrality and legality. The fact was, of course, that such a separation in international law was in reality an impossibility, for these principles and standards were being formulated and ‘set’ in the words of the Count himself by [and one should add in the interests of], ‘the rich and powerful States’.⁴¹³ It is consequently by focusing on the economic dimensions of the discussions that the true nature of this novel semi-peripheral sovereignty becomes clear. It is no surprise that the principle of open door or economic equality was considered by the Count to be the very basis of the mandate system.⁴¹⁴ It was also clear that the mandatory power, including the members of the League, expected the continuation of certain economic rights, and it was on this specific question of ‘economic equality’ that disagreements arose as it was obviously contradictory and so challenging to resolve an obligatory open door with independence.

By the twentieth session, which was held in June 1931, there were three separate memoranda on the points in question written by Van Rees, Lord Lugard, and Count Garcia. These memoranda raised some interesting issues regarding the different interpretations of independence under the Mandate system. Van Rees attempted to make the argument that the readiness of a people for independence, ‘is a question of fact and not of principle, and the answer could be found only in local conditions as a whole, connected with political and administrative organizations and their working with the economic and social development of the territory.’⁴¹⁵ Moreover, when the mandate of the territory in question lapses, an entirely new state comes into being. For this reason, Van Rees emphasized that, ‘you cannot say that the mandate is abrogated and at the same time use the mandate as the legal basis for the establishment of conditions which must be fulfilled by the emancipated territory’.⁴¹⁶ Although special conditions should be imposed on the new state, these conditions must have their basis on ‘considerations foreign to the mandate’. If these conditions, ‘which the civilized world have the right to make on the new state’, are not accepted, then the territory in question would not be worthy to take its place among the society of nations.⁴¹⁷ Van Rees then turned to the principle of economic equality and admitted that to re-establish this obligation would ‘gravely impair the sovereignty of the territories declared independent.’⁴¹⁸ So, there must be a way to square this circle as it were and as will be clear this was done by emphasizing the notion of ‘reciprocity’⁴¹⁹ after independence – i.e. that the

⁴¹³ *Ibid*, at 206.

⁴¹⁴ *Ibid*.

⁴¹⁵ P.M.C. Minutes, 20th session, pp.195-201.

⁴¹⁶ *Ibid*, at 198.

⁴¹⁷ *Ibid*.

⁴¹⁸ *Ibid*, at 200.

⁴¹⁹ *Ibid*, at 185. Thanks to the legal form of the treaty that was possible.

newly ‘independent’ state would be able to negotiate freely on the basis of reciprocity with the former Mandatory powers on issues relating to the economic sphere and this would suffice. The reality was that this resolution did not take into account that the international legal order served the interests of the powerful imperial states and real ‘reciprocity’ was not possible in such a situation.

The British member, Lord Lugard’s memorandum dealt with the meaning of the term ‘standing alone’.⁴²⁰ He argued for a liberal interpretation of the words ‘to stand alone,’ and expected a slow transition, whereby a state may need to stand alone, ‘with the aid of a prop, or buttress to lean on’.⁴²¹ Lugard ended with a summary of what was essential for the internal and external conditions of withdrawal of the mandate. Regarding the former question of internal conditions, the Council must be satisfied that the new state could maintain internal order and efficient government; the welfare and just treatment of racial, linguistic and religious minorities must be assured; the new State must be able and willing to fulfill the obligations it undertakes; that it has functioned for a certain time with success, and that there is an adequate prospect of economic and financial stability.⁴²² As for the question of external conditions, Lugard listed the following: that the state must accept ‘the general principles of international law’; where the redistribution of the capitulations are stipulated in the mandate, it would also have to accept the obligations therein; religious freedom and justice must be assured to foreigners, and finally treaties made by the mandatory on behalf of the territory must remain in force unless denounced by the new state.⁴²³

Lugard believed that these conditions were necessary and justified, because ‘emancipation from a mandate is something *more than independence*, as is shown by the fact that Iraq, though subject to the mandate regime, is already independent.’⁴²⁴ As for the principle of economic equality, Lugard did not find it as an essential part of the mandate system.⁴²⁵ This was not surprising considering that Britain already had their economic interests secure in Iraq – there was no need to insist on this point as the other members. The notion that ‘emancipation’ from the mandate process was ‘*more than independence*’ reveals a lot on the characteristics of the emergent semi-peripheral sovereignty, for *concrete sovereignty on its own was unacceptable*.

⁴²⁰ *Ibid*, at 201.

⁴²¹ *Ibid*, at 201-203.

⁴²² *Ibid*.

⁴²³ *Ibid*, at 202.

⁴²⁴ *Ibid*.

⁴²⁵ *Ibid*.

What was required was sovereignty that was incorporated into the international legal order on the terms of the imperial powers.

Finally, turning to Count Garcia's memorandum, it was reiterated that withdrawal from the mandate should not affect the maintenance of peace. With regards to the question of the conditions, he argued that to require an emancipated territory to give equality of economic opportunity to members of the League would be unreasonable, but that this privilege may be granted voluntarily upon condition of reciprocity by the new state.⁴²⁶

The members subsequently discussed these three memoranda in the twentieth session. Orts believed that with the combination of these three reports, one would be able to draft a reply to the Council. The PMC ultimately agreed that that the list of obligations to be imposed by the mandated territory at the time of its emancipation from a mandate, as well as, the criteria by which independence would be granted should both be dealt with by the Council. Orts reminded the members that the commission's job was a legal one – that of laying down the legal principles for emancipation from the mandate, and it was not its place to take political action, which was for the Council to do.⁴²⁷

A topic that was discussed at length was the question of economic equality and its perpetuation as a guarantee. One argument that was made by Orts was the impossibility of imposing this principle on a truly independent state, as it would amount to an impairment of sovereignty.⁴²⁸ The chairman's response was that this principal should be safeguarded as its existence amounted to, 'an acquisition on the part of the League...in that its application could not but contribute...to the maintenance of world peace'.⁴²⁹ Merlin added that the principle was necessary precisely to protect the mandated territory from a situation where the ex-mandatory power would take advantage of its position and dominate the new state economically or to set a 'price for its emancipation'.⁴³⁰ The principle of the open door was therefore, according to this argument, a protection from the potential of future exploitation from the ex-mandatory power. It was eventually agreed by members that economic equality was to be extended through the 'most-favored-nation-treatment' to members of the League, which should be granted on condition of

⁴²⁶ P.M.C. Minutes, 20th Session, at 205-210.

⁴²⁷ *Ibid*, at 153.

⁴²⁸ *Ibid*, at 156.

⁴²⁹ *Ibid*.

⁴³⁰ *Ibid*.

reciprocity for a transitional period.⁴³¹ In other words, it was not to be an obligation, but rather voluntarily given by the new state. This assumed that the principle of ‘reciprocity’ in international law was by itself enough to protect the new state from the economic domination of the powerful ex-mandatory, which was far from reality in Iraq, where Britain dominated nearly every aspect of its economy.

The PMC concluded its findings to the Council by listing the conditions needed to be fulfilled before a mandated territory could be released from a mandated regime.⁴³² The Council approved the PMC’s report on September 4, 1931. It was only then that the question regarding Iraq’s case was referred to the PMC in its twenty-first session to advise whether it has been fulfilled based on the general principles previously laid down.

The PMC ultimately but reluctantly came to the conclusion that Iraq satisfied the general conditions above. In assessing the de facto conditions they examined *The Special Report...on the Progress of Iraq, 1920-1931*, which was submitted by the British and painted an auspicious picture of the progress of the Iraqi state and its institutions. The report claimed that Iraq had, ‘all the working machinery of a civilized government.’⁴³³ Britain asserted that it has appropriately fulfilled its Mandatory obligations. The High Commissioner at the time, Henry Dobbs argued that Article 22 of the Covenant, which required that a Mandate could only be terminated when a state was able to ‘stand alone without the rendering of administrative advice and assistance by the Mandatory,’ should be interpreted narrowly; Iraq was able to ‘stand alone’ administratively – not militarily or economically, but that was sufficient.⁴³⁴

By June 1931, the PMC, skeptical throughout its deliberations, while noting that certain provisions of the treaty were ‘somewhat unusual’, nonetheless unanimously agreed to admit Iraq after a declaration confirming Britain’s continuing ‘moral responsibility’ to the implications of

⁴³¹ *Ibid*, at 185.

⁴³² *Ibid*, at 157-160. This list included: a settled government and administration capable of maintaining a regular operation of essential government services; the capability of maintaining its territorial integrity; maintenance of public peace; the availability of adequate financial resources; and the possession of laws and a judicial system which affords justice for all.

⁴³³ Colonial Office. *Special Report*, 11.

⁴³⁴ TNA. CO 730/119/10DO no. SO 448, Secret Draft, from Sir Henry Dobbs, Baghdad, to the Secretary of State for the Colonies, London, 24 February 1927, part 1, 1927 Iraq, no.40299, Admission of Iraq to the League of Nations and Revision of the Anglo-Iraqi Treaty, 1927, 173.

Iraq's independence was made.⁴³⁵ On October 1932, Iraq became the first (and ultimately only) mandated state to gain formal independence through the processes of the Mandatory system.

The PMC's deliberations above reveal an attempt to construct within international law a specific form of sovereignty that would ensure the imperial powers' geopolitical and economic dominance of Iraq and accordingly the semi-peripheral Middle East as a whole. One could notice that although questions pertaining to economics were considered as paramount concerns that should be taken into account, they were purposely set aside as either secondary or technical in nature. Yet, it is my argument that if one were to focus on the underlying economic aspects of these deliberations that the purpose of the mandate system, in particular, the 'A' mandates of the Middle East would be clear. As one commentator observed, although the 'A' Mandates were clearly made to be transitory, they were likely to leave behind 'a permanent economic monument in the shape of a new overland route across the desert from Europe to India to Persia'.⁴³⁶ The Mandate system as it relates to the semi-periphery was hence approached in a specifically geopolitical and spatial manner that was (ironically) quite similar to the economic framework that defined the Sykes-Picot agreement.

An examination of the oil concessions and pipeline agreements thus illuminates the specificity of the form of sovereignty that emerged in Iraq. The 'A' mandate system linked the three mandated areas economically by an oil pipeline from the Mosul oilfields to the ports of Haifa in Palestine and Tripoli of Syria. Moreover, the British government surveyed the route for a railway from Haifa to Baghdad, 'that would pass by what is today British mandated territory, and thus bring the peoples of Iraq and Palestine into one trade orbit'.⁴³⁷ Bentwich considered these vital economic links to be such a defining characteristic of the 'A' Mandates that he believed that they would eventually bring about the political integration of the Arab states.⁴³⁸ Before moving forward with this analysis, the economic principles of the Mandate system must be identified and described.

⁴³⁵ PMC, Minutes, 20th session, at 134. See Emerson, Rupert. "Iraq: The End of the Mandate".

⁴³⁶ Arnold Toynbee, *Survey of International Affairs*, (London: Royal Institute of International Affairs, 1930), at 174.

⁴³⁷ Norman Bentwich. "The Termination of the A Mandates", (Max-Planck Institut für ausländisches öffentliches Recht und Völkerrecht, 1933), http://www.zaoerv.de/03_1933/3_1933_1_a_176_191.pdf, at 191.

⁴³⁸ *Ibid.*

VI. The principle of economic equality, the ‘open door’ or the freedom of capitalist accumulation under international law

The principle of economic equality, which is also known more generally as the principle of the ‘open door’, was one of the most important economic principles of the Mandate system. It ensured that the mandatory territory was (legally) open to world markets, essentially allowing its natural resources to be exploited by the members of the League. It was this principle, along with rapprochement⁴³⁹, and rationalization⁴⁴⁰ that made up the economic principles underlying the League.⁴⁴¹ The idea behind this principle was that, ‘the Mandatory must be discouraged from deriving exclusive economic and other advantages from the performance of its task’.⁴⁴² This (theoretically) removed the ‘international friction’ that would naturally arise from the ‘monopolization of commerce and resources’ by any one power.⁴⁴³ The reputable Polish-British international lawyer and jurist, Hersch Lauterpacht considered that based on the *travaux preparatoire* preceding the drafting of the Covenant of the League of Nations, the principle of economic equality was ‘admittedly modeled after the pattern of the Berlin Treaty of 1885 relating to the Congo and the treaty of St Germain of 1919 which revised it’.⁴⁴⁴ However, the difference between this principle and its earlier uses at the end of the nineteenth century was that it prohibited any ‘position of unilateral advantage’ for Western powers, because ‘permanent inequality of the Mandated Territory in the field of international trade must...be rejected as...contrary to the intention of the framers of the Mandate.’ ‘The regime of the Mandate,’ Lauterpacht continues, ‘was not conceived as a system of economic exploitation of the Mandated Territories by all the Members of the League as distinguished from exploitation by the Mandatory only.’⁴⁴⁵

⁴³⁹ The principle that political and economic cooperation was necessary for the maintenance of peace.

⁴⁴⁰ The theory that it was necessary to control economic conditions of production, distribution and consumption.

⁴⁴¹ Michael Fakhri, *Sugar and the Making of International Law* (Cambridge: Cambridge university Press, 2014), at 74.

⁴⁴² Hersch Lauterpacht, *International Law: Being the Collected Papers of Hersch Lauterpacht, Volume 3, The Law of Peace*, (Cambridge: Cambridge University Press, 1977), at 89-90.

⁴⁴³ *Ibid.*

⁴⁴⁴ *Ibid.*

⁴⁴⁵ Lauterpacht, *supra*, at 90. Bentwich, the British attorney-general of Palestine describes the open door principle as ‘...the complete antithesis to the Colonial system of the eighteenth century, by which the governing territory alone was allowed to make profit out of the Colony, and that country framed a policy designed to enrich itself as much as possible. The maxim of the new order is: ‘Seek equality and avoid greed’. Bentwich, *supra*, at 108.

The principle of economic equality (and the open door) was therefore interpreted under international law as *not* amounting to exploitation in any way, but the reality as the case of Iraq exemplifies, was that economic exploitation continued unabated. The only difference was that it was now justified under the new post-war international legal order, and operated under the mantle of development and the cloak of a new and justified form of sovereignty.

The ‘open door’ emphasized that the preservation of free trade and investment was necessary for the (semi-peripheral) sovereignty that would emerge after a mandate had run its course. Even the ‘maintenance of peace’, which as we saw was referred to throughout the PMC deliberations, actually meant the maintenance of peace *for the very purpose of free trade* with the members states of the League.⁴⁴⁶ Hence, in theory, the open door’s purpose was to avoid the possibility of war by permitting the Great Powers a share in the access to resources of the newly acquired territories rather than the maintenance of the old approach of ‘economic fortification’ around one’s territories – a policy known as the ‘sphere of influence’. In addition, the open door was generally justified on the basis that the free market through competition would ultimately be beneficial for the development of native society (driving up wages) and its economy. The open door policy was therefore maintained to be favorable for *all* parties involved.

New research on the economic functions of the League generally lacks analysis of the *link* between the political and juridical aspects of the Mandate system and exactly how it was *connected* to its underlying economic features (particularly in the semi-periphery), and how it furthered capitalism.⁴⁴⁷ The fact was that a specific form of political order and a corresponding legal ideology/doctrine was essential for the principle of the open door to work in the semi-periphery. It is for this reason that the US government was satisfied with Britain’s ultimate control over Iraq, for as long as the semi-peripheral sovereignty that emerged would ensure, ‘the kind of political order receptive to capitalism and foreign investment,’ preserving ‘the proper climate for business activity,’ the US government would not oppose British designs over Iraq or the region.⁴⁴⁸

⁴⁴⁶ Fakhri, *supra*, ft. 441, at 74.

⁴⁴⁷ See Patricia Clavin, *Securing the World Economy: The Reinvention of the League of Nations, 1920-1946* (Cambridge: Cambridge University Press, 2015).

⁴⁴⁸ Stivers, *supra*, ft. 462, at 74. The PMC held that property and contract rights were to be maintained beyond the mandate. The Council followed suit by ruling that successor states must honor economic agreements made by their previous imperial overlords. Pederson, *supra*, ft. 341, at 235.

Semi-peripheral sovereignty therefore could not be understood without an examination of the economic principles that were meant to be reconciled with it, and effectively maintained in the region. Benjamin Gerig, an American member of the League Secretariat and a proponent of free trade, wrote one of the most important studies on the principle of ‘open door’ in 1930 in which he highlighted the significance of this link when he concluded his book by stating that ‘the Mandate system is undoubtedly the most effective instrument yet devised to make the Open Door effective’.⁴⁴⁹ It is exactly this *link* between the economic principle of the open door to the semi-peripheral sovereignty that emerged in the case of Iraq that should be studied, as the subordination of the mandated territory of the semi-periphery to the world economy was meant to remain intact and sustained in another form after the termination of the mandate.

VII. The independence of oil pipelines: semi-peripheral sovereignty in relation to oil concessions in the Middle East

To understand this link further, I will explore the discussions regarding the IPC oil concessions in Iraq and the (1931) pipeline agreements with Palestine and Syria, to explore how they overlapped with Iraqi semi-peripheral sovereignty. This analysis will illuminate the unique characteristics of semi-peripheral sovereignty. It will also reveal its effects on the emergent spatial configuration and in turn on the workers in Iraq, which will be dealt with in Chapters 4 and 5.

Oil was always at the backdrop of Iraq’s modern history, although it has sometimes been deliberately overlooked. One notices this in the PMC deliberations— oil concessions in the case of Iraq were merely discussed in the context of economic equality and even then, only dealt with in detail in relation to the mandated territories that were affected by the construction of a new pipeline that was intended to allow access of Iraqi oil to the Mediterranean.⁴⁵⁰ It will be clear how although the ‘semi-peripheral sovereignty’ discussed above was intended to make the open door policy function on the ground, the question of oil was ultimately distinguished from it by certain legal reasoning. Instead, the open door policy that was meant to (in theory) protect the interests of the Iraqi government by allowing competitive tenders from various prospects on the

⁴⁴⁹ Benjamin Gerig. *The Open Door and the Mandate System: A Study of Economic Equality before and since the establishment of the Mandates System*, (London: George Allen & Unwin, 1930), at 199.

⁴⁵⁰ PMC Minutes, 20th session, at 144-9,168-77.

market, and prevent monopolization, was in reality evaded through the use of an innovative instrument of the oil consortium. This instrument allowed the (legal) principle of open door to be satisfied (at least as far as the PMC were concerned) partially and only in theory, while effectively circumventing it in practice. Hence, in the end, the open door policy was differentiated by the PMC in every legal question that arose on the 'A' Mandates, whether in Iraq or the region. My intention in this part of my argument is to emphasize that only by bringing this oil narrative closer to the question of 'semi-peripheral sovereignty' could one would grasp its unique features.

The 'A' Mandates were not confirmed nor allocated (as the 'B' and 'C' mandates) until Anglo-French negotiations over Mesopotamian oil (mostly concentrated in the province of Mosul and described by a German technician as 'a veritable lake of petroleum of almost inexhaustible supply'⁴⁵¹) were resolved and formalized in the San Remo Conference in Italy in April 1920. The complementary oil agreement secured a 25 percent share of the oil output for the French government, but made it clear that 'the petroleum company shall be under permanent British control'.⁴⁵² The British justified taking control of the oil fields in Mosul by reference to the London-based Turkish Petroleum Company's (TPC) unratified pre-war concession agreement with the Ottoman government of 1914, which secured the British Anglo-Persian Company (later to be renamed BP) 50 percent of the share of the concession, while promising the 'native government' up to a 20 percent share.⁴⁵³ Despite denials that the British were attempting to devise a monopoly, US protests over their exclusion from the agreement, alleging a violation of the open door principle were eventually conceded, leading to a revised agreement in 1923. The US-owned Standard Oil Company was consequently promised a 25 percent share of its monopoly concession in the exploitation of oil in Iraq.⁴⁵⁴

⁴⁵¹ See Edward Mead Earle, *Turkey, the Great Powers, and the Baghdad Railway: a Study in Imperialism*, (New York, Macmillan, 1923), at 15; as quoted in Timothy Mitchel. *Carbon Democracy: Political Power in the Age of Oil*, (London: Verso, 2011), at 48.

⁴⁵² See the full text of the agreement in J.C. Hurewitz, *Diplomacy in the Near and Middle East*, (New York: Van Nostrand, 1958) at 75-77. Anglo-Persian Oil was to hold half of the share in the ownership of the company, while Shell controlled the other half. See, Mitchell, *supra*, ft. 451, at 95.

⁴⁵³ See Marian Kent, *Oil and Empire: British Policy and Mesopotamian Oil, 1900-1920*, (London: Macmillan, 1976); and Mejcher, Helmut. *Imperial Quest for Oil, Iraq 1910-1928*, (London: Ithaca, 1976).

⁴⁵⁴ Gerig, *supra*, ft. 449, at 137-144. The TPC was eventually jointly owned in the following composition: the Anglo-Persian Oil Company (23.75 percent), Royal Dutch Shell (23.75 percent), Compagnie Francaise des Petroles (23.75 percent), and a US-based consortium made up of Standard Oil of New Jersey and Mobil (23.75 percent each) and Gulbenkian (5 percent). Hence, British shares were predominant in this arrangement.

Following this understanding, the Turkish Petroleum Company (later renamed the Iraq Petroleum Company [IPC] in 1929) began direct negotiations with the Iraqi government. Although the Iraqi government with the help of the British negotiated certain terms that would prevent the TPC from intentionally delaying production for the purpose of inflating oil prices on the market (such as a timeline for the construction of a pipeline and a minimum level of production), the most important demand which would have ensured the implementation of these terms – an actual share of ownership, did not materialize. The oil companies refused to budge on this issue, and the Iraqi government finally capitulated, signing the concession in March 1925. The oil companies were therefore successful in establishing an exclusive TPC [IPC] concession, which included exclusive rights of exploration in all of Iraq (with the exception of the province of Basra), while fully removing Iraqi part-ownership.

These negotiations occurred while the question of Mosul was still looming.⁴⁵⁵ The territorial dispute over Mosul, the province in which the bulk of these oil fields were located, was yet to be determined. The League of Nations Commission of Inquiry that was appointed and sent to investigate the validity of Turkish claims over the province eventually recommended that Mosul remain attached to the state of Iraq.⁴⁵⁶ Although the commission chose not to mention the recent extensive and exclusive concession in their report, there was a clear correlation between the two affairs,⁴⁵⁷ especially if one were to consider that the British inferred to the Iraqi government that resolving the oil negotiations swiftly would safeguard Mosul, and would in turn open the door for British support for Iraqi independence at the League of Nations.⁴⁵⁸ Moreover, the commission made an argument that Mosul must remain a part of Iraq from ‘the purely economic’ point of view, as it cannot be separated from ‘its natural hinterland’.⁴⁵⁹ The Commissioner’s interpretation of ‘purely economic point of view’ was in fact the view of the multinational corporations and foreign investors, especially the oil companies, who ensured

⁴⁵⁵ See Sara Shields, ‘Mosul Questions: Economy, Identity and Annexation,’ in Reeva Simon and Eleanor Tejirian, eds, *The Creation of Iraq, 1914-1921*, (NY: Columbia University of Press, 2004); Quincy Wright, ‘The Mosul Dispute,’ *American Journal of International Law* 20:3, July 1926: 453-64.

⁴⁵⁶ See League of Nations, *Question of the Frontier between Turkey and Iraq, 1925* (Wirsén Commission Report).

⁴⁵⁷ Even as early as the Lausanne conference the question of Mosul could not be disconnected from oil. Sluglett claims that, ‘oil and the frontier award were so inextricably mixed that it is difficult to discuss one except in terms of the other...’ *supra*, ft. 87, at 71.

⁴⁵⁸ Mitchel, *supra*, ft. 451, at 97.

⁴⁵⁹ *Question of the Frontier between Turkey and Iraq. Report submitted to the Council by the Commission instituted by the Council Resolution of September 30", 1924*. Geneva: League of Nations, 1925 (Document C.400. M.147, vii), as referred to in, Mai Taha. *Nation and Class Subjectivity in International Law and its Institutions in the Middle East, 1919-1939* (SJD Dissertation, University of Toronto, 2015), at 127.

access to the most valuable natural resource of the province.⁴⁶⁰ The British subsequently (as per the Mosul determination) amended the Anglo-Iraq Treaty to extend the mandate to a further twenty-five years, while including a provision that immediately terminated the mandate once Iraq advances to the stage of political development that qualified it for membership at the League. The oil concession could therefore not be understood in isolation from the semi-peripheral sovereignty that emerged in Iraq and vice versa.

The arrangement between the oil companies and the Great Powers that was made to ensure that economic equality (at least in theory) was to be satisfied was in reality more of a compromise. It has for this reason been described as a ‘slowly opening door’ rather than an actual ‘open door’⁴⁶¹ It has similarly been argued that the open door principle was effectively ‘diluted’ in this particular case, because of the fact that in reality, American companies were not permitted to bid freely for concessionary right; instead one exclusive American group, and this group alone was absorbed by a monopoly.⁴⁶² This explains why some members of the PMC made the observation that the Iraq government appeared to have agreed to a policy of monopolization after all.⁴⁶³ In that sense, what emerged was a special arrangement, which Gerig called a ‘practical open door’ in the form of a consortium: ‘a new experiment in international co-operation’.⁴⁶⁴ This new mechanism should be analyzed in relation to ‘semi-peripheral sovereignty,’ as it was a part of the overall legal arrangement that was intended to be a model for the manner in which the natural resources of the ‘A’ Mandates (in particular Iraqi oil) were to be exploited within the ambits of the new international legal order. The usefulness of this mechanism in legal reasoning would remerge in PMC deliberations in Geneva.

The complex arrangement described above remained controversial, and Geneva was turned into an international ‘arena for publically contesting’ the strategic interests of the great powers, especially oil claims.⁴⁶⁵ These disputes generally occurred within the confines of the open door principle, and the PMC was called upon to consider petitions that alleged that this sacred principle was violated.⁴⁶⁶ It was clear that the principle of the open door needed to be

⁴⁶⁰ *Ibid.*

⁴⁶¹ Gerig, *supra*, ft. 449, at 149.

⁴⁶² William Stivers, “International Politics and Iraqi Oil, 1918-1928: A Study in Anglo-American Diplomacy”, *Business History Review*, Winter, 1981, 55:, pp.517-532;’ at 533.

⁴⁶³ 16 *PMCM*, at 41-44.

⁴⁶⁴ Gerig, *supra*, ft. 449, at 184.

⁴⁶⁵ Pederson, *The Guardians, supra*, ft. 341, at 272.

⁴⁶⁶ *Ibid.*

addressed and eventually reconciled with this new reality through legal reasoning by the PMC. In 1927, Kastl who was the committee member assigned by the PMC to write a report on whether the 1925 IPC concession was compatible with the principle of open door (already enshrined in Article 11 of the 1922 Anglo-Iraq Treaty), concluded that there was no violation. However, he made sure to voice his apprehension to the fact that Iraq's interests would have been better served if there was open competition, stating that 'there is no doubt that the extension of the Concession implies a very great advantage for the Company.'⁴⁶⁷

The interesting legal reasoning for our purposes was first put forward by Van Rees, who pointed out that the Iraq Treaty was silent on the point of 'industrial concessions' and it could therefore be inferred that the Iraq government was 'free to act on its own discretion' with regards to the extension of the concession by thirty-five years.⁴⁶⁸ The point was that there was no violation of the open door, because oil concessions were an exception. Orts' responded with a hint of irony that the Iraqi '...people would learn with surprise that the clause [in the Treaty] referring to economic equality did not apply to Iraq's principle industry'.⁴⁶⁹ It was this sort of legal reasoning that distinguished oil concessions, which would reappear in later PMC deliberations, in particular those regarding the pipeline agreements with the mandatory administrations of the other 'A' Mandates – Palestine and Syria.

After the IPC began drilling, the company discovered a vast oilfield stretching to the North of Kirkuk, and decided to use this as an excuse to delay production for further reconnaissance. It was a longstanding strategy of oil companies to delay and sabotage production for the purpose of increasing global oil prices, and this was tactfully used against the Iraqi government, who were demanding the immediate construction of a pipeline to begin production as per the agreement. The Iraqi government, however, was crippled with a high deficit, and so had no alternative after prolonged and intense negotiations but to agree to sign a revised concession in 1925 in exchange for a modest cash advance in 1931. The agreement was later described by the US State Department's oil expert as 'one of the worst oil deals that has ever been signed'.⁴⁷⁰ The revised concession eliminated all taxation of the company's profits, removed the minimum production obligation, and the company's relinquishment of undeveloped plots. It also

⁴⁶⁷ PMC, 14, at 214; *See* at 247-249 for the full report.

⁴⁶⁸ *Ibid*, at 38.

⁴⁶⁹ *Ibid*.

⁴⁷⁰ Mitchel, *supra*, ft. 451, at 47, 102.

extensively expanded the area of the concession from 192 square miles to 32,000 square miles.⁴⁷¹ The subjugating structures within this concession would extend to the entire region through the conventions signed by the other 'A' Mandate states (Palestine, Syria and Lebanon).

The construction of a pair of (bifurcated) oil pipelines were planned to transport Iraqi oil to the Mediterranean – one branching south to Haifa (Palestine) and the other north to Tripoli (Syria). These were not only the biggest pipelines in the world at the time, but they were to increase global oil production fourfold (from 20,000 to 80,000 barrels a day) despite only representing a fraction of Iraq's oil production capacity.⁴⁷² To make this a reality, two identical pipeline agreements (or conventions) were signed between the IPC and the Palestine and Syrian mandatory administrations.

The PMC never actually discussed the revised 1931 IPC concession in Iraq, nor was the issue of whether this concession violated any of the Mandatory provisions of the Anglo-Iraq Treaty ever raised. There was no need to raise any issue as long as the initial 1925 concession was established not to have violated the open door principle. Besides, Iraq was close to attaining 'independence', and it was ironically this gained 'sovereignty' that was to ensure that these crucial issues were resolved in international law. It is for this reason that one would need to follow the PMC deliberations elsewhere to get some clues as to the nature of the semi-peripheral sovereignty that was attained by Iraq. It is within these discussions regarding the pipeline agreements between the IPC and the two other mandated territories in the region that one would find some insights on the role of semi-peripheral sovereignty on the entire region.

During the twentieth session, the PMC had lengthy discussions on the pipeline agreements between the IPC and the mandate administrations of Palestine and Syria. Although the PMC eventually decided not to denounce the British and the IPC, it was clear that several members were highly critical of these agreements. The two 'closely related' but 'quite distinct' issues in these discussions were whether the question of economic equality was violated by the (pipeline) concessions, and whether the interests of the territories in question suffered by the concessions in violation of the mandates.⁴⁷³ The agreements appeared to provide the company with considerable benefits at the expense of the native populations of the mandatory territories:

⁴⁷¹ *Ibid.*

⁴⁷² *Ibid.*

⁴⁷³ See PMC, 20, 168-176, at 168.

the company paid no import tax on oil used for its own works or on construction material used for its operations, the oil in transit was not subject to export tax, the lands required for the pipe-line was rent-free, and the company was not liable to taxation by the mandatory administration.⁴⁷⁴

The questions that arose could be understood in the context of certain provisions in the Palestine mandate. Article 18 of the mandate, which reproduced the principle of economic equality, prohibited any discrimination, in matters concerning taxation in favor of the nationals of any state members of the League (or its companies). Advantages that were precisely those granted to the IPC. Article 18 also made it clear that the Mandatory administration, ‘may impose such taxes and custom duties as it may consider necessary, and take such steps as it may think best to promote the development of the natural resources of the country and to safeguard the interests of the population.’⁴⁷⁵ The question for the PMC was whether the pipeline agreement (the Convention of 1931) violated Article 18 of the Palestine Mandate.

The arguments that arose were interesting. The members, who believed that the concession did not violate the provision in the mandate, generally emphasized how the pipeline concessions would greatly benefit from the development of the mandated territories in question. The British Lord Lugard was the member who argued vigorously to emphasize this point. He claimed that the privileges and exemptions were ‘small in comparison with the benefits,’ that arose from the concession, such as the influx of capital, employment of labour, and the increase of shipping in its ports.⁴⁷⁶ Merlin similarly claimed that the concession would in fact directly lead to, ‘changing completely the economic aspect of Iraq, Palestine and Syria...[especially through] the establishment of oil ports,’ where ‘many vessels would put in at those ports, and as a result, money would be spent there, and a commercial port would certainly develop....’ and these were very important factors from the stand point of the development of these territories.⁴⁷⁷ Besides, Lugard stated, the committee already questioned the representatives of the mandatory powers of Palestine and Syria earlier, who were clear that the agreements would greatly benefit the territories.⁴⁷⁸

⁴⁷⁴ *Ibid*, at 169.

⁴⁷⁵ *Ibid*, at 144-45.

⁴⁷⁶ *Ibid*, at 169.

⁴⁷⁷ *Ibid*, at 172.

⁴⁷⁸ *Ibid*. Lugard claimed that he found their statements ‘honest and truthful’. This was usually the manner in which the PMC deliberations were conducted, especially when members questioned the representatives of mandatory powers. The members would seldom question the representative’s statements even if they were exaggerated or false. It is for that reason that the PMC never actually

Van Rees made an alternative argument agreeing that the concession should be exempted from both the application of the provision of the mandate and economic equality. He argued that this concession had a ‘special character’, which covered a vast program of works that should be recognized as ‘being of public utility’.⁴⁷⁹ In other words, although it was a private company that bore the expense of these works, the nature of the works remained of public utility! Van Rees actually went so far as to make the claim that it ‘was not engaging in commerce, but was dealing with Governmental affairs’.⁴⁸⁰ The principle of economic equality therefore, did not apply in this case as it was a case of ‘essential public works’, and the concession did not therefore infringe on the mandate.⁴⁸¹

These arguments above were (slightly) rejected by the other members of the PMC, who were openly critical of the pipeline agreements (in particular Orts, Ruppel, Rappard and de Penha Garcia). Orts responded to Van Rees that admitting an exception such as the one proposed would eventually lead to ‘a class of privileged concessionaires exempt from ordinary law,’ opening up further disregard of the principles of the mandate.⁴⁸² Moreover, it appeared that the territory was actually paying the whole cost of the scheme in the form of exemptions from taxation and custom duties, and that this was ‘the unpleasant feature of the scheme’.⁴⁸³ Ruppel rejected Van Rees’ reasoning, emphasizing that the concession was in reality ‘exclusively private in character’ and it was not intended for public use as the use of the pipeline was reserved for the company.⁴⁸⁴

Rappard was the member who was the most critical, appearing to almost denounce the mandatory power and the company when she said: ‘Here was a British company exploiting for its own advantage the natural resources of Iraq. The company had found it advantageous to bring its pipeline through Palestine. But...the concession given it by the mandatory Power...granted it exemption from all the rules of common law... therefore it seemed that... [the mandatory Power] had subordinated the interests of the country under its mandate to the interests of a company of its

denounced a mandatory power. A good example occurs in the case above when Rappard, who was overly critical of the pipeline agreement, had to later emphasize that, ‘if in the course of the discussion, he had himself used vigorous language in putting his points, he had never meant to accuse the Mandatory power,’ *ibid*, at 170.

⁴⁷⁹ *Ibid*, at 145.

⁴⁸⁰ *Ibid*, at 146.

⁴⁸¹ *Ibid*.

⁴⁸² *Ibid*.

⁴⁸³ *Ibid*, at 147.

⁴⁸⁴ *Ibid*.

own nationality.’⁴⁸⁵ Although Rappard stressed that the company actually had a ‘British legal personality,’ Lugard insisted that the company was a consortium composed of four nations, and that Britain had no advantage in this arrangement.⁴⁸⁶ Here, one notices how the novel legal mechanism of the consortium was used (especially in legal reasoning) for the very purpose of avoiding any allegation that economic equality was being violated.

The PMC’s deliberations regarding these oil concessions (or conventions) concluded with the members unable to reach an agreement on the issues, and it was decided that it was not necessary to formulate *observations* to the Council, which would require a vote. The PMC’s deep division could not possibly allow for an unprecedented denunciation of a mandatory power, although one could easily interpret this calculated move as a partial denunciation by implication.⁴⁸⁷ The statement submitted to the Council affirmed that the provisions of the mandate ‘did not constitute an obstacle’ to the granting of the advantages conferred by the concessions for the construction of a pipeline in Palestine and Syria and the Lebanon, but the PMC made sure to mention the disagreements on the issue by stating that, ‘during its discussion...doubts were expressed by certain of its members as to whether some of the clauses of the agreements in question kept the necessary balance between the advantages and privileges granted to the concessionary company and the advantages that would accrue to the two territories’.⁴⁸⁸

Therefore, the fact that the pipeline agreements were a ‘natural corollary’ to the Iraqi concession illustrate that the subjugating structures within this concession extended to the entire region. The legal reasoning made a distinction between the principle of economic equality and oil concessions in that the latter were allowed to violate the principle of open door – they were made to be exceptions to the ‘A’ mandates in question. This is why these discussions are revealing, as they illustrate quite clearly the actual function of Iraqi semi-peripheral sovereignty in its intersection with the oil concessions. As Lugard admitted, ‘[t]he oil came from Iraq. Surely that country was entitled to obtain access to the sea by the shortest route.’ He went on to refer to ‘the principle underlying the Navigation Act of Vienna of 1815 and the Berlin Act of 1885’.⁴⁸⁹ As Bonné, explains ‘the antecedents of the Pipe-line Concession are inseparable from the actual

⁴⁸⁵ *Ibid*, at 147, emphasis added.

⁴⁸⁶ *Ibid*, at 148, 171.

⁴⁸⁷ As Fritz Grobba of the German Foreign Ministry mentioned if the two divided sides voted, the PMC would have narrowly condemned the British Government. See Pederson, *supra*, ft. 341, at 274

⁴⁸⁸ PMC, 20TH session, *supra*, at 230.

⁴⁸⁹ *Ibid*, at 170.

[Iraqi] concession for the exploitation of oil...[as]...without the assurance of unhindered transport, the possession of oil wells is useless...'⁴⁹⁰ It is apparent that the legal reasoning and the principles of international law in these discussions were advanced to ensure that the flow of Iraq's oil was to gain access to the shortest route to the sea. Here my argument comes full circle: as the pipeline agreements cannot be explained without reference to the Iraqi oil concession, so the concession cannot be explained without Iraqi semi-peripheral (political) sovereignty.

Semi-peripheral sovereignty turned out to be more than just about the granting of independence to Iraq, but about the economic exploitation and geopolitical control of the region as a whole, especially through the access, extraction, production and transportation of oil to the world economy. The importance of oil to the world market was so vital that it was allotted exceptional status to the principles of international law of the time, as even the sacred open door principle of the mandate system was contradictorily circumvented by the mandatory powers, the oil companies and by the PMC in Geneva through complex legal mechanisms and sophisticated reasoning as was shown above.

VIII. Conclusion

The main point of this chapter is to illustrate the role of international law in the juridical formation of an 'independent' Iraqi state in the Middle East in the context of the Mandate system. My argument is that the 'A' mandates were designated in the semi-peripheral Middle East with imperial considerations in mind that were exclusive to the semi-periphery (such as geopolitics and access to oil). The purpose of the juridical construction of semi-peripheral sovereignty must consequently be directly linked to the economic principles of the Mandate system, in particular the open door policy. I have also shown how the oil concessions that were negotiated in Iraq were intrinsically connected to the question of Iraqi independence, and the semi-peripheral sovereignty that emerged. It was only after the question of oil was settled that Britain sought Iraq's independence in the League of Nations. The PMC in Geneva, who as jurists were knowingly making international law in their sessions, eventually confirmed the viability of this semi-peripheral sovereignty and welded its doctrines in the context of the international legal order. My main argument was not only that Iraqi semi-peripheral sovereignty was required for the Great Powers to gain access to Iraqi oil, but further to (economically) control the region as a whole. By

⁴⁹⁰ Alfred Bonné. "The Concession for the Mosul-Haifa Pipe Line," *The Annals of the American Academy of Political and Social Science*, Vol. 164, Nov. 1932, 116-126; at 116.

analyzing in detail the contentious discussions relating to the pipeline agreements between the IPC and the other 'A' Mandate states, the role of semi-peripheral sovereignty in the entire region becomes clear.

The tracing of these legal mechanisms and instruments reveal that international law was continually present in the history of the Mandate system in the Middle East, and one could not ignore its significance. The shifting international law necessitated the juridical construction of a semi-peripheral sovereignty within international legal doctrine to be granted to Iraq. This was the only way that Iraqi oil was to be *legally* extracted and transported to the Mediterranean and to the world. An entire legal edifice (whether mechanisms, technologies, structures or instruments) followed this narrative – I have discussed several in detail, such as the treaty and the consortium. It is ironic how Iraqi sovereignty, especially through the oil concession (and the 1930 Anglo-Iraq Treaty) actually further subjugated the other mandated territories in the region, notwithstanding the fact that these administrations looked to Iraq's independence as a hopeful development. Iraq would be governed by the semi-peripheral sovereignty that it gained in 1932 and its corresponding Treaty for another two and a half decades until the revolution broke.

Chapter 4: The Oil Workers' Struggle Against the Legal Spatiality of Imperialism in the Iraqi Oil Frontier

Why are the people hungry unable to get sustenance
And the children of the toiler perish from starvation?
Oil pipelines, the property of the people, and they pass through
All its profits into the pockets of thieves.⁴⁹¹

~ Zāhid Mohammad

The natural resources [of this country] have become a curse upon it through which the colonizer gains strength, [while] the suffering of the people surges.⁴⁹²

~ 'Abdul Fatāh Ibrāhīm

I. Introduction

The previous chapter revealed the manner in which the oil concession and pipeline agreements were intrinsically linked to the juridical construction of semi-peripheral sovereignty and the making of 'independence' in Iraq. My purpose in this chapter is to analyze the implications of this concessionary agreement and the emergent semi-peripheral sovereignty on the socio-economic conditions of the working class, in particular by examining the micro-history of the oil fields in the provincial city of Kirkuk. This will be done by examining why the oil workers of the Iraqi Petroleum Company (IPC) in Kirkuk and the surrounding areas, organized against the legal structures of imperialism that were imposed upon them, and how their actions at specific points in space and time forced the company, the British and the Iraqi government to reassess their labour arrangements. I will then move to detail and analyze the Gawurbaghi strike

⁴⁹¹ As quoted by Iraqi communist and legal scholar, 'Abdul Hussein al-Sha'bān; in Tawfiq al-Tamīmī, *ḥiwār m'a al-Akadīmī wa al-Mufakir Dr. 'Abdul Hussein al-Sha'bān'* [A conversation with the academic and thinker Dr. 'Abdul Hussein al-Sha'bān]; al-Nour Foundation for Culture and Media, (30/3/2012). al-Sha'bān recalled when he went to a mass demonstration against the Israeli-British-French attack on Egypt in 1956, as a young boy, he joined the crowds in reciting these verses from Zahid Mohammad's poetry. Mohammed was a popular poet, who was a port worker and active in the labour movement. <http://www.alnoor.se/article.asp?id=148176>

⁴⁹² Abdul Fatāh Ibrāhīm. *'Ala Ṭarīq al-Hind* [On the route to India], first published in 1935, (Dīmashq: Manshūrāt Wizarat al-Thaqāfa, 1991), at 238.

of 1946 that was violently suppressed. I will critique the ‘official’ company narrative of the strike and use the archive against itself to expose the limits of this narrative. The company’s ultimate response, which was to shift its ideological approach to one of social development, will then be examined, in particular its attempt to impose a specific ideology and alternative institution of trade unionism. Finally, I will argue that law played a significant role in the production of the space of the Iraqi oil frontier; concluding with an examination of the legendary K3 pumping-station strike of 1948 to further advance my analysis.

II. Urban migration & the labour question in post-war Iraq

Although Iraq’s population was mostly rural, by the end of the 1940s the urban populations of the cities grew at a rapid pace – increasing from only 25% in 1930 to 37% in 1947.⁴⁹³ Of course, one of the main reasons for this ‘mass exodus’ was what was described in Chapter 1: the intolerable conditions of the agricultural worker (*fellāh*), who took every opportunity to flee from his serf-like conditions, seeking a better life in the cities. No longer tied to the land, he became a wage earner. However, when he reached the city, he found that conditions were not so much better. Most rural migrant workers became the bulk of unskilled work force, taking on precarious work, inhabiting and squatting in small mud huts (or *sarifas*) at the outskirts of the cities. Living at near starvation levels, when unable to find work, they sometimes had no recourse but to turn to theft.

One significant factor that contributed to the fast changing labour conditions of underemployment in the 1940s arose directly from the winding up of the war effort that employed a bulk of the Iraqi working class. The Middle East Supply Centre⁴⁹⁴ commissioned a British academic (Peers) to write a report to study the question of labour and advise on solutions regarding the anticipated mass layoff of local workers that were to be discharged from the service

⁴⁹³ Sassoon, *supra*, ft. 141, at 3. For detailed statistics on this rural-city migration see, M. Salman al-Hasan. *Tattawur al-Iqtisādi* for al-Iraq, at 71. According to Hasan, this migration began as early as 1918 and 1920, when the police and military institutions were formed as the majority of these had their origins in the rural areas.

⁴⁹⁴ The Middle East Supply Centre was an agency set up in Cairo in 1941 during World War II as a clearing-house for all matters of civilian supply and transport in the region. Its goal was to regulate and control shipping and commerce among the countries in the region to aid the war effort. See Martin W. Wilmington. *The Middle East Supply Centre* (NY: SUNY, 1971).

of the British Army by the end of the war.⁴⁹⁵ Peers made several proposals that entailed that ‘surplus labour’ could be reabsorbed into certain sectors, in particular the ‘modal points of movements, [communications] and trade’ (the railways, the port of Basra and road transportation).⁴⁹⁶ Other than the apparent development of irrigation and agriculture schemes, the expansion of public works (with the help of British ‘technical experts’) would allow for the re-employment of those discharged, although he admitted that certain unskilled workers (especially what he referred to as ‘black-coated laborers’) would be difficult to absorb in the peacetime economy.⁴⁹⁷ The increased output of oil, a valuable ‘exportable commodity’ was regarded as promising outlet that would help in this regard.⁴⁹⁸

Despite having a somewhat positive outlook on the prospects of labour in post-war Iraq, Peers was cognizant of some of the difficulties that would arise. ‘It is wrong to assume,’ he wrote ‘that the entire body of unskilled laborers recruited for the war effort will easily and automatically return to their villages, to be reabsorbed into agricultural pursuits...’⁴⁹⁹ It was clear that there was now ‘an uprooted class’ emerging that would not return to agricultural pursuits, especially considering that there was absolutely no security for the small cultivator and the fellah. After Peers’ initial report, the labour committees that were formed during the war with the purpose of framing labor policy in the country, had to finally address this issue of a transition.⁵⁰⁰

This chapter will study the role of IPC in the city of Kirkuk by examining what Joseph Sassoon referred to as the ‘triangular relationship’ between the Iraqi government, the IPC and the

⁴⁹⁵ TNA. FO 921/302. ‘Labour, Middle East: Report on Iraq by Professor Peers’ (1944). This report was considered as the ‘first of its kind’ as it directly dealt with the question of labour, emphasizing the urgency of dealing with it before the war comes to an end.

⁴⁹⁶ *Ibid*, at 11.

⁴⁹⁷ *Ibid*.

⁴⁹⁸ *Ibid*, at 17.

⁴⁹⁹ *Ibid*.

⁵⁰⁰ See TNA. FO 921/300. Director of Pioneers and Labour to Peers, 829/PL. 26 May, 1944. There were at least three labour committees and sub-committees in Iraq at the time. These committees were generally composed of representatives of the R.A.F, R.O.C., I.P.C., and the Iraqi government amongst others. Their function was to monitor and fix wage scales and ensure that labour provisions were adequately met. The question of ‘civilian labour discharge’ was eventually brought up on June of 1945 and a special committee was formed to revise wages in relation to the cost of living, and more importantly to discuss the transition to peacetime with the establishment of labour exchanges ‘to the social advance and re-employment of workers discharged by the army’. Although the responsibility was left for the Iraqi government, the British were prepared to advise on the matter. See FO 371/45304. E4789/216/93. 22 June, 1945. ‘Disposal of Civilian Labour discharged in Iraq by British forces’.

British.⁵⁰¹ The labour movement (in particular the oil workers) influenced and exposed this ‘triangular’ relationship and I will bring their narrative to the fore. I will begin by describing the economic and political influence of the IPC in the city of Kirkuk by focusing on how the legal structures imposed by the concession in conjuncture with the 1930 Anglo-Iraqi Treaty allowed it to wield its power on the local economy of the city and on Iraq as a whole. The semi-peripheral sovereignty gained by Iraq described earlier brought about a somewhat ambiguous legal or jurisdictional space that allowed for such (rather fragmentary) hegemonic control to emerge, while contriving at least the appearance of an arm's length relationship between the three actors. So, despite the fact that the company and the British government kept in regular contact, coordinated and exchanged intelligence, British officials emphasized that the IPC was ‘quite separate from His Majesty’s Government’.⁵⁰² The fact was that their relationship was more harmonious, as the IPC were willing to assist the British government in their political and imperial aims in the country and vice versa.⁵⁰³ One of the arguments in this chapter is that the ability to claim that there was a *separation* between the interests of the British and the IPC was partly made possible because of the juridical instruments at the intersection of the concession and the 1930 treaty, and this juridical component of this history is something that needs to be taken more seriously in the current scholarship.

III. Everyday life in an oil company & the miserable conditions of the Iraqi oil worker

The economic power welded by the IPC (with the support of the British Embassy) arguably made it somewhat function like a de facto ‘state within a state’ or at least allowed it to at times function in a governing capacity, particularly in its impact on the every day lives of Kirkukis and Iraqis. Consequently, its labour policies made a considerable impact on the city of Kirkuk, affecting the labour policy of the country as a whole. As described in Chapter 3, the 1931 agreement was favorable to the IPC as it eliminated the Iraqi government’s power to tax the company’s profits and removed the minimum-drilling obligation. By expanding the concession area from 50,000 hectares to 8 million hectares, the IPC (which was technically a British firm)

⁵⁰¹ Sassoon, *supra*, ft. 137, at 252.

⁵⁰² TNA. Comments by Beckett (Treasury), 29 May 1942. T 160/1157/17859, as referred to by Sassoon, *supra*, ft. 141, at 251.

⁵⁰³ One British official in London made it quite clear in his minutes that there should be closer coordination between the British government and the oil companies in the region, because ‘His Majesty’s Government and the oil companies are all in it together and...the more mutually helpful they can be to each other the better’. TNA. Minute by E.A. Berthoud, 18th May 1948, FO/371/68479, E6413/620/93/G.

would eventually gain a monopoly over the entire topographical area of the oil fields and in turn oil production in Iraq (initially excluding Basra).⁵⁰⁴

Although oil was not yet directly vital to the development of the country (which would only occur after 1950 with the renegotiation of the oil agreement to increase royalties to the Iraqi government), it still significantly contributed to the finances of the government and its budget.⁵⁰⁵ The fact was that the Iraqi government regularly turned to the IPC for direct loans, which were never given unconditionally.⁵⁰⁶ Furthermore, as will be seen throughout this narrative, the central government in Baghdad seldom interfered with the IPC's operations in the city of Kirkuk and the weak municipal government in many ways preferred to protect the company's private interests (even violently if need be) as opposed to that of its constituents. One company report described the IPC's power in freely wielding political influence, stating that; 'in Iraq...we are fortunate in having more freedom of action, with our operations not subject to the dictates of restrictive legislation...'⁵⁰⁷

From the moment that oil volcanically erupted out of the drill at Baba Gurgur in June 1927 (which was to become the coronary artery of the Kirkuk oil fields and the Kirkuk-Haifa-Tripoli pipeline), Iraq was transformed from a potential prize to, 'one of the most valuable concessionary areas in the world'.⁵⁰⁸ Considering the significance of oil for British strategic, economic and military interests, it was no surprise that the British government would choose to eagerly put their administrative and diplomatic resources at the service of the company, especially when it came to controlling labour unrest that certainly took its inspiration from broader concerns of anti-imperialism, communism and nationalism.⁵⁰⁹ The IPC, therefore, had characteristics of

⁵⁰⁴ By 1938, it would acquire the only other competitor in the country, the British Oil Development Syndicate (BOD), which had an Italian majority shareholding interest. A subsidiary of the IPC, the Basrah Petroleum Company, would acquire the BOD's 75-year concession, and so the IPC would finally succeed in establishing its monopoly over Iraqi territory (except the small district of Khanaqin). See Zuhayr Mikdashi. *A Financial Analysis of Middle Eastern Oil Concessions: 1901-65*. (London: Frederick Praeger, 1966), at 73.

⁵⁰⁵ For details on these negotiations and the agreement see Penrose & Penrose. *Iraq: International Relations and National Development*, (London: Ernest Benn, 1978).

⁵⁰⁶ Sassoon, *supra*, ft. 141, at 249.

⁵⁰⁷ 'Comments on: Report on Employees Housing Programme,' 23 June 1952. BP 135818.

⁵⁰⁸ J.H. Bamberg. *The History of the British Petroleum Company: Volume 2, The Anglo-Iranian Years, 1928-1954*, (Cambridge: Cambridge University Press, 1994), at 157. It should be noted that this work is the 'official' history commissioned by the company.

⁵⁰⁹ TNA. FO 371/61673. E 3045/1492/IG. 'Strategic Importance of Kirkuk oilfields' (9 April, 1947); The Chiefs of Staff still did not consider the Kirkuk fields in Iraq as more strategically important as

both, an (political) imperial and (private) corporation as it operated inside a newly ‘independent’ state (that is, within ‘sovereign’ territory that belonged to Iraq). This situation elucidates, as James Ferguson has suggested how ‘new forms of disorder and order’ accompanied such ‘selectively territorialized’ mineral-extraction enclaves (such as the oil company), which allowed capital to flow and ‘hop’ freely in-between wide geographic spaces.⁵¹⁰ For this reason, Nelida Fuccaro argues that, as an oil city with a turbulent history, Kirkuk should be located, ‘at the *intersection* of the complex corporate, imperial, national and international politics that marked the development of oil production in the Middle East after the First World War.’⁵¹¹ It was at *this* intersection, where contradictory tensions were located, did urban violence and industrial unrest manifest.

The IPC’s arrival at Kirkuk considerably altered its urban landscape and demographic characteristics, as it attracted diverse rural-urban migration of those seeking work from rural areas and surrounding cities.⁵¹² These rapid changes would result in an increase of Kirkuk’s urban population from around 25,000 in the 1920s to 68,000 in 1947, nearly half of which were to be employed by the company.⁵¹³ Within the next two decades, Kirkuk was developed not merely as a modern ‘oil city,’ but as a focal pipeline town or terminus where from Iraq’s ‘Third River’ emanates.⁵¹⁴

The IPC would go on to build a network of pipelines across the desert to reach the ports of the Mediterranean in Palestine and Syria. Twelve mini-company towns were eventually erected along a parallel network of 12-inch pipelines functioning as pumping-stations.⁵¹⁵ Four of these stations were in Iraq: K1 was the first station built adjacently to the Kirkuk fields; K2 was

the fields in Abadan, Iran since they were only ‘partially owned’ and anyway they were confident that the Iraqi government could suppress any disturbances.

⁵¹⁰ James Ferguson. “Seeing Like an Oil Company: Space, Security, and Global Capital in Neoliberal Africa,” (2005) *American Anthropologist*, Vol 7, Issue, pp. 377-382.

⁵¹¹ Nelida Fuccaro. “Reading Oil as Urban Violence: Kirkuk and its Oil Conurbation, 1927-58,” in Freitag, Fuccaro, Ghrawi & Lafi, Eds. *Urban Violence in the Middle East: Changing Cityscapes in the Transition from Empire into Nation State*, (New York: Berghahn, 2015), pp.222-242; at 223.

⁵¹² For a detailed discussion on the effects of the IPC on Kirkuk’s urban landscape see, Arbella Bet-Shlimon. (2012). *Kirkuk, 1918-1968: Oil and the Politics of Identity in an Iraqi City*, Ph.D. dissertation, Cambridge, MA: Harvard University, 148-158.

⁵¹³ *Ibid*, at 161.

⁵¹⁴ Fuccaro, *supra*, ft. 511, at 225. The propaganda film entitled ‘the Third River’ presented the oil company as producing the river of wealth that would flow into the world transforming everything it touches. Accessed at BP Archive, July 2016. See Mona Damluji. “The Image World of Middle Eastern Oil,” Hannah Appel, Arthur Mason & Michael Watts (eds.), in *Subterranean Estates: Life Worlds of Oil and Gas*, (Ithaca: Cornell University Press, 2015), pp.147-164.

⁵¹⁵ S. Longrigg. *Oil in the Middle East: Its Discovery and Development*, (London: 1969) at 179.

25 miles away; K3 was located in the small town of Haditha in the Upper Euphrates and was the point of bifurcation (i.e. where the pipeline diverges in two directions, one going towards Tripoli and the other Haifa), and finally T1 was located not far from the Syrian border.⁵¹⁶ One British exploration geologist at the time described the complex infrastructure that complemented the oil pipelines: ‘There was a whole infrastructure to support the [pipe] lines: twelve pumping stations; 100 wells and 320 kilometers of water pipelines in the desert, serviced by twelve smaller pumping stations to provide drinkable water; terminals with eight underwater lines to moving berths 1.5 kilometers from the shore; a network of telegraph, telephone and wireless connections to support operations; an air transport system; four main rail heads workshops, offices and a labour force...’⁵¹⁷ These interconnected towns would be central for the IPC’s propaganda discourse in Iraq and the region as they were presented with their new residential buildings, facilities, schools and supermarkets, as being a part of the larger effort of development and modernity of the ‘new’ Iraq and Middle East.⁵¹⁸

However, concealed beneath the surface, reality could not be any different, as the majority of daily wage earners (who although lived relatively better than those living in the urban slums of Baghdad, Kirkuk and Basra), were subject to intense exploitation and arrogant racism. Desmond Stewart and John Haylock, two British schoolteachers described the K3 pumping station as an ‘oil cage’, denoted by ‘a military abbreviation,’ it was more ‘a nightmare settlement from science fiction’ as it was based on a system of extreme class exploitation:

Nearly three thousand people live on the station, and they are rigidly segregated into castes. British employees and a few Iraqis comprise the first class; school teachers are included with the clerks in the second; labourers are, of course, in the third... The cool, thickening [British] officials give the Iraqis the impression that they regard themselves as superior beings, angels of technology with messages and orders, to be delivered in office hours... In K3 [they conclude] even in politeness the class system prevails. The “first class” do not salute the “third class,” the “second class” can only go into the first-class club by invitation.⁵¹⁹

⁵¹⁶ Fuccaro, *supra*, ft. 511, at 225. See Iraq Petroleum Co. *An Account of the Construction in the years 1932 to 1934 of the Pipe-line of the Iraq Petroleum Company, limited, from its oilfield in the vicinity of Kirkuk, Iraq to the Mediterranean ports of Haifa (Palestine) and Tripoli (Lebanon)*, (London, St, Clements press, 1934).

⁵¹⁷ Michael Quentin Morton. *In the Heart of the Desert: The Story of an Exploration Geologist and the Search for Oil in the Middle East*, (Aylesford: Green Mountain Press, 2007), at 11.

⁵¹⁸ Henry Longhurst describes the private company jets (named the IPC’s ‘Doves’) as ‘flying like clockwork between headquarters, the oilfields and the pumping stations’. Henry Longhurst. *Adventure in Oil: The Story of British Petroleum* (London: Sidgwick and Jackson, 1959), at 204.

⁵¹⁹ Desmond Stewart and John Haylock, *New Babylon: A Portrait of Iraq* (London: Collins, 1956), at 181-190.

This ‘caste-like system’ was a characteristic of colonial relations, which remained sharply rampant, openly visible and in many ways unbroken within these oil enclaves.

Although the Company controlled the supply of labour within the fields, a bulk of local workers were daily wage earners, who were directly hired from Bedouin contractors.⁵²⁰ An exploitative system of tribal ‘racketeering,’ was in place and it expanded due to the lack of trade unions at the time; it often put the worker in debt, forcing him to borrow money from local moneylenders to pay the high employment fees.⁵²¹ The IPC did not contest this system of labour recruitment, but was rather complicit in its perpetuation by regularly using it to hire a significant number of its daily wage earners, at least until the early 1950s. It was this system of labour recruitment that was heavily relied on in the construction of the pipelines described above and it continued thereafter.⁵²² Tribal sheikhs sold the labour of their tribesmen on a daily basis to avoid the provisions of the labour law, which did not protect daily workers. Yet, the company was always careful to emphasize that their workers were paid a higher wage than any other industrial establishment, and that they were given subsidies and benefits, such as a rent allowance.⁵²³

IPC workers were hired on the basis of a hierarchical grade system – that is, there were at least five grades of workers with different wage scales. For instance, the company hired ‘coolies’ and ‘unskilled labour’ as daily wage earners, as opposed to skilled laborers who would have received a higher monthly wage. A labour sub-committee report indicated that the lowest daily wage paid in October 1946 was 310 fils⁵²⁴ (or 260 without rent allowance) and the minimum living cost index for a small family (or the ‘labourer’s basket’) in June 1946 was 379 fils.⁵²⁵ As the labour advisor of the British Middle East Office in Cairo, M.T. Audsley reported two months after the 1946 Kirkuk strike, despite the fact that the oil companies paid higher wages compared

⁵²⁰ TNA. LAB 13/674. ‘Notes on Labour Expert’s visit to K3 & K2,’ on 11th to 15th Jan, 1952, by Labour Advisor of Iraqi Government.

⁵²¹ *Ibid.*

⁵²² See Iraq Petroleum Co. *An Account of the Construction*, *supra*.

⁵²³ TNA. FO 371/68482. ‘Report on visit to Iraq from 8th June to 10th July by M.T. Audsley’ (1 November, 1948).

⁵²⁴ The Iraqi dinar was on par with the British pound and so 1 fils was equivalent to 50 shillings (the British currency in the Empire at the time).

⁵²⁵ TNA. Sir H. Stonehewer-Bird (Bagdad) to FO, 29/10/1946. FO 371/52456. E1094/3860/93. ‘Labour Conditions in Iraq’. See ‘Labourer’s Basket – man, wife and 2 children as revised by Central Labour Sub-committee ref. Minutes of Meeting of Dec. 22, 1942, Part 1(b)’.

to other large employers, because of growing inflation, no wage was able to keep pace with the rising cost of living index.⁵²⁶ Hence, he argued that any increase in wages would only lead to an increase in rents and foodstuff and this would not have a favorable impact on the community and so he recommended increased amenities rather than cash wages as a more appropriate response.⁵²⁷ By comparison the average wage of semi-skilled labour in other large undertaking (such as the Railways) was 230 fils. This wage wrote Audsley meant that ‘vast numbers of workers are very nearly half starved’.⁵²⁸ This was in July of 1948 when the cost of living increased by six times due to inflation. This was only a few months before the *Wathba* uprising.

The labour conditions in the oil fields were ominously harsher than the company and most British officials would admit. It was not merely the question of the differences of wages between the ‘grades’ of workers and the visibly large gap between the wages of officials and skilled workers (mostly British) and non-skilled or semi-skilled workers (mostly Iraqi), but there were other concerns, which would in time transform the oil fields into the center of labour strike action and anti-imperial struggle.

As already mentioned, the company operated in a socially segregated manner, not merely in the remoteness of the workers’ quarters from the fortified company camp, where higher paid British company officials and their families resided, but in everyday company life.⁵²⁹ One British Embassy councilor noted, ‘I found that there was almost completely no intercourse between the IPC and the local inhabitants...and [not even] Iraqi officials ever seemed to be invited to the [company] camp’.⁵³⁰ Warning of the repercussions, the councilor advised the company to collaborate with the British Institute (a cultural organization) to invite Iraqis to such things as a cinema showing, as even if they ‘do not understand a word of the film’ it would foster a good relationship.⁵³¹

A perceptive British Embassy official (F. Wells) touring the IPC stations for the first time wrote an astoundingly candid account of what he encountered:

⁵²⁶ TNA. FO 371/68482. ‘Report on visit to Iraq from 8th June to 10th July by M.T. Audsley’ (1 November, 1948). See p.9 for details of wage scales.

⁵²⁷ TNA. Stonehewer to FO, 25 Oct 1946, ‘Labour Conditions in Iraq’, E10773/3860/93.

⁵²⁸ *Ibid.*

⁵²⁹ This was the case with other oil fields. Robert Vitalis has brilliantly exposed how ARAMCO established a Jim Crow system -imported from the Southern US- within the Dhahran oil camps in the 1930s. See Robert Vitalis. *America’s Kingdom: Mythmaking on the Saudi Frontier*, (London: Verso, 2009).

⁵³⁰ TNA. FO 624/105. ‘Oil: IPC Labour Welfare’, 25 October, 1946.

⁵³¹ *Ibid.*

Sometime ago a British businessman...said to me, "Iraq is just like a British Dominion". I was reminded of this remark during the tour which I just made of the IPC Pipe line stations...These foreign concessionary installations are directed by a handful of Europeans, mostly British, and the distinction between management and labour rather shocked me...It is difficult to make precise criticisms of the workers' conditions...they are well fed and are for the most part housed in Nissan huts, which are certainly far superior to the mud hovels of their villages...But the relation between management and labour is outwardly that of "sahibs" and "niggers" and this aspect is accentuated by the luxury in which the management and British staff live, and their remoteness. There is no unofficial social contact between British and Iraqis; in fact I gathered that such contact is discouraged...In brief, my impression was what our Russian friends would call capitalism at its worst, and foreign capitalism at that. It is rather a shock to anyone who sees it for the first time...⁵³²

Here, one could clearly see how the 'higher wage rate' that the company often referred to served more as propaganda tool to fend off criticisms as calculation of a wage could not in itself explain the shockingly humiliating conditions of the Iraqi workers in these camps and the indignity they felt.⁵³³ The company was generally oblivious to these conditions before the eruption of the strike in 1946.⁵³⁴

The extraordinary social tensions of semi-colonial 'foreign capitalism' and imperialism described above were reflected in the manner in which workers were being discharged, usually without notice. One company response to press criticisms that workers were being unjustly discharged was scribbled on the side of a British report in the following way: 'the statement that "anybody who dares to disobey is discharged immediately" is of course...correct. You could hardly expect to run any undertaking...on any other basis, could you?'⁵³⁵ Despite the fact that Iraq became an 'independent' state nearly two decades before the above report was written, colonial relations remained fully intact, especially in the concessionary enclaves of the semi-colonial and imperial spaces of oil production. This was certainly due to the juridical intersection between the private oil concession and the semi-peripheral sovereignty given to Iraq. As we will see, these racialized colonial relations and the indignity that they produced would guarantee the detonating of the massive strike to come.

⁵³² TNA. FO 624/130, Minutes by F. Wells, 7 April, 1948.

⁵³³ One veteran Iraqi communist who worked at the IPC in his youth describes in his memoirs how every Iraqi (whether a worker or staff member) was expected to respond with the phrase 'Yes, sir' when addressed by a British company official. Obviously, Iraqi workers considered this insulting. Tomā Tomās, "Awṛāk Tomā Tomās" (1) (The Papers of Toma Tomas -1-), *al-Nnās*, 10/15/2006, (<http://al-nnas.com/THEKRIAT/15jsf1.htm>).

⁵³⁴ Arbella Bet-Shlimon. "The Politics and Ideology of Urban Development in Iraq's Oil City: Kirkuk, 1946-58," *Comparative Studies of South Asia, Africa and the Middle East*, Vol.33, No.1, 2013, at 29.

⁵³⁵ TNA. FO/624/176. 'Oil: IPC Labour', 10 Aug, 1949.

IV. The Gāwūrbāghī strike & the limits of Iraqi law in penetrating imperial spatiality

Communist parties around the world were generally given some freedom to operate during the Second World War⁵³⁶, and the ICP took advantage of this by organizing workers into trade unions. This had an effect of opening up some freedoms in Iraqi society, and it was around that time that an amendment to the labour law was passed that made further improvements in compensation, overtime and vacation terms.⁵³⁷ It was also around that time that the al-Pachachi government legalized several trade unions – between 1944 and 1945, sixteen trade unions were licensed. Of these sixteen, communists led twelve, while the others were led by those affiliated with the left, such as the social democrats.⁵³⁸

One of the first unions licensed in 1944 was the Railway Union. It was this union that would organize the 15-day *Schālchīyyah* strike in 1945, which was a precursor of the Kirkuk oil strike of 1946.⁵³⁹ This strike would produce a cadre of labour organizers and worker-communists that would later lead the workers in the Kirkuk oil fields. One of these leaders was a young communist by the name of Hannā Ilyās Kohārī (Abū Til'at),⁵⁴⁰ an ex-member of the Supervisory Committee of the suppressed Railway Union, who was discharged from the railways after the suppression of the strike, and eventually found his way into the employ of the IPC.⁵⁴¹

The Iraqi Communist Party was a vast complex organic network that was organized in branch, district and local committees. The smallest unit in the network was the cell (*al-khaliyyah*) that was made up of two and five members who worked in a common place. It was the center of organizing action – the main point of contact with the masses.⁵⁴² Workers, peasants, and students were organized in local factory, rural and school committees. It was this type of organizational structure that made the party quite effective. The main characteristic of communist organizing amongst the working class at the time was that of *penetration* – with the intention of organically

⁵³⁶ This was due to the fact that the Soviet Union was a major ally in the fight against Fascism.

⁵³⁷ Law No.36 of 1942.

⁵³⁸ Sbāhī, *supra*, ft. 191, at 255.

⁵³⁹ The *Schālchīyyah* railway strike will be detailed in Chapter 5.

⁵⁴⁰ See Hirmuz Kohārī, "Tahiya Ijlal wa Kībār li shūhadā' al-Tabaqa al-'āmīla" [A homage to the great martyrs of the working-class], in *al-Hīwār al-Mutamadin*, 5/3/2006 (<http://m.ahewar.org/s.asp?aid=63746&r=0>). After the Kirkuk strike, Hanna Kohārī, a Christian Chaldean, spent his days in prison until the 1958 revolution, but would later be imprisoned again, tortured and killed by the Ba'athists during the bloody month known as 'Black February' of 1963. His comrade dedicated a long poem to him, where a reference is made of Ilyās' 'journey of struggle in Kirkuk: 'the battle of the garden' [i.e. the Gawurbaghi garden].

⁵⁴¹ Batatu, *supra*, ft. 41, at 622.

⁵⁴² Johan Franzen, *Red Star Over Iraq: Iraqi Communism before Saddam* (London: Hust & Co), at 40.

making communism a part of the ‘flesh and blood’ of the labouring masses.⁵⁴³ The party planned to target the ‘colossal enterprises’ fully or partially managed and/or owned by the British – the railways, the Port of Basra and the oil refineries. Although, the aim was to convert these economic hubs of imperialism into ‘Communist fortresses,’ it was rather the ability of a handful of communists to guide and influence workers to articulate their demands that eventually made their strikes effective.⁵⁴⁴

Returning to the central narrative in Kirkuk, learning of the successes of their fellow workers’ strike in the IPC terminus in Haifa (Palestine),⁵⁴⁵ the oil workers of Kirkuk (especially the daily workers) began sending a series of petitions. One pamphlet, which was circulated among IPC workers in January 1946, described their miserable conditions in detail, stating that ‘our standard of living...have become so low that it cannot be considered fit for any free and civilized man in the age of the Atomic Bomb’.⁵⁴⁶ It goes on to claim that, ‘[t]his Concessionaire... [and the] imperialistic foreigners seek nothing but to augment their own profits, and we, the human-beings, are left...as a cheap commodity, subjected to those imperialists who cannot sympathize with us, simply because they have come to rob us of everything – our wealth... independence... [and] freedom’.⁵⁴⁷ The workers go on to criticize their extremely low wages, lack of food, shelter, transportation, and their severe working conditions; ending their appeal with a call for collective organized action: ‘organize yourselves rank and file’ through the formation of a union.⁵⁴⁸ The moment that the IPC received this petition, the fields’ manager, Mr. Wheatley, contacted the head of the Kirkuk police, giving him permission to set up a base of operations from within the oil fields and the company camp.⁵⁴⁹

⁵⁴³ Batatu, *supra*, ft. 41, at 605.

⁵⁴⁴ *Ibid.*

⁵⁴⁵ See Zachary Lockman, *Comrades and Enemies: Arab and Jewish Workers in Palestine, 1906-1948* (Berkeley: University of California Press, 1996), 232-34, 327-32.

⁵⁴⁶ BPA. ‘The Miserable State of the Iraq Petroleum Company’s Workmen at Kirkuk,’ translated in English and enclosed in ‘Iraq During the Year 1946,’ File 162461, BP.

⁵⁴⁷ *Ibid.*

⁵⁴⁸ *Ibid.*

⁵⁴⁹ Iraq National Archives. ‘Report by the administrative investigator Saïd al-Qazāz’ in a file entitled, ‘Workers’ strike of the IPC’ 17/Kirkuk/6; as refereed to in, Ja’far Abbās Ḥumaidī. *al-Tatwurāt al-Syasīya fī al-‘Iraq, 1941-1953* [‘the political developments in Iraq, 1941-1953’] (al-Najaf: Matb’a al-Ni‘man, 1976), at 431. This is consistent with British records that suggest that the fields’ manager was in constant contact with the police and asked for ‘special police protection’ of the IPC during the strike. See TNA FO 371/52456. Wheatley, Kirkuk to Stock, London, dated July 30, 1946 in E7581/3860/93. ‘Strike of Iraq Petroleum Company at Kirkuk’, 1 August 1946, at 2.

The IPC flatly rejected the workers' demands. Instead, they permitted the formation of a toothless 'workmen committee', after expelling several so-called 'agitators' and 'trouble-makers'.⁵⁵⁰ Even though Hanna Ilyās was still elected to the committee, he considered it 'an imperialist device aimed at crippling the struggle of the workers and their basic rights.'⁵⁵¹ The workers then decided to meet at a local coffeehouse on June 13 and agreed on the following list of demands rather than participate in the company committee: the recognition of their legal right to form an independent trade union; the increase of their cost of living allowance from 80 to 250 fils; an end to arbitrary dismissal of workers; the arrangement of transportation to and from work, the granting of a war bonus (equivalent to that of the IPC workers in Haifa), and the introduction of sickness, disability and old-age insurance.⁵⁵² The *mutasarif* (governor), who acted as a mediator between the company and the workers, subsequently made a statement ensuring his sympathy with the workers, and promising that he would convince the company to fulfill their reasonable demands within the provisions of the labour law.⁵⁵³

The workers then decided to give the authorities a two-week window until July 3 to fulfill their demands before calling a strike. On July 1, the company agreed to a mere 50 to 100 fils increase of the high-cost-of-living allowance, and rejected all other demands.⁵⁵⁴ The company point of view, according to Mr. Wheatley, was that the members of the workmen committee 'seemed satisfied' with this offer and only changed their attitude because of the intimidation tactics of 'political agitators' who 'harangued their colleagues' that they have been 'swindled'.⁵⁵⁵ This account was maintained throughout, and the IPC insisted that they have always been 'the best employers of labour in Iraq'.⁵⁵⁶

⁵⁵⁰ TNA. FO 371/52456. E7581/3860/93. 'Strike of Iraq Petroleum Company at Kirkuk', 1 August 1946.

⁵⁵¹ *Ibid.*

⁵⁵² TNA. FO 371/52456. Telegram from Baghdad, to Foreign Office, London, 19 July 1946, I.P.C. workers' strike at Kirkuk. Batatu, *supra*, ft. 41, at 623

⁵⁵³ Iraqi National Archives. 'Statement of Mutasarrif of Kirkuk to IPC workers, No.4810, dated June 19, 1946' as referred to in Humaidī, *supra*, ft. 545, at 422. The *mutasarif* ensured the workers that if their demands were not eventually met, they may proceed to the proper channels to appeal (through the Ministry of Social Affairs and the Ministry of Interior) and that 'all doors' of the 'responsible' state institutions were open to them.

⁵⁵⁴ TNA. FO 371/52456. Telegram from Baghdad, to Foreign Office, London, 19 July 1946, I.P.C. workers' strike at Kirkuk.

⁵⁵⁵ TNA. FO 371/52456. Wheatley, Kirkuk to Stock, London, dated July 30, 1946 in E7581/3860/93. 'Strike of Iraq Petroleum Company at Kirkuk', 1 August 1946.

⁵⁵⁶ *Ibid.*

The next day a Higher Strikers' Committee was formed, which constituted four worker-communists (including Hanna Ilyās), a Committee-in-Reserve of five, and five subordinate strikers' committees of four to six members each, representing a variety of workers, including, the workshop, motor and mechanical workers.⁵⁵⁷

When the two-week window ended, a strike was called on July 3. The response was instantaneous. Around 5,000 oil workers responded, ultimately leading up to a massive demonstration in the streets of Kirkuk the following day, whereby workers marched with their banners that bore their demands, chanting: 'Long live the working class; long live the oil workers' union'⁵⁵⁸; 'we demand the right to organize our trade union!' and 'we demand the improvement of our labour conditions!'⁵⁵⁹ Picket lines were formed around the entrances of the oil fields.⁵⁶⁰ The strikers would assemble daily in what became the focal point of the strike in Gāwūrbāghī, a large garden in the western outskirts of Kirkuk, not far from the company camp. There they would hold meetings, listen to speeches and poetry delivered in all local languages, representing the diversity of Kirkuk.⁵⁶¹ In one speech, a communist strike leader explained to the workers the semi-colonial character of the company: 'we are all confronting *one* enemy. It is not only the oil workers by themselves who are the victims of the company, for the octopus spreads its tentacles into every aspect of our affairs; they stand behind the *Iqtā'in* (feudalists) who exploit the fellahīn...and the *mutasarrif* threatens the workers in defense of the interests of the company and the government persecutes the people...so that the company may continue to exploit our oil...and so that the boots of [British] soldiers remain defiling our land... You say you hate colonialism, but what is colonialism? It is the monopolistic oil company precisely.'⁵⁶² There was

⁵⁵⁷ Batatu, *supra*, ft. 41, at 623

⁵⁵⁸ CP/CENT/INT/17/01, Workers of the Iraq Petroleum Co. go on strike, Baghdad, 5 Jul. 1946.

⁵⁵⁹ al-Ṭalibāni, Makram. 'Gāwūrbāghī Malḥama Buṭūliya', ["Gawurbaghi: a heroic epic of the working class"] *al-Thaqāfa al-Jadīda*, Issue 26, July 1971.

⁵⁶⁰ TNA. FO 371/52456. E7581/3860/93. 'Strike of Iraq Petroleum Company at Kirkuk', 1 August 1946; Handwritten notes on Baxter's meeting with Wheatley.

⁵⁶¹ The speeches were delivered in Arabic, Kurdish, Assyrian, Armenian and Turkish. See Resan Hussein, 'Idrāb Gāwūrbāghī: Mūthīra Nidhāliya Kabīra' ['The Gawurbaghi Strike: a great glorious struggle'], *Tarīk al-Sha'ab*, Issue 230, July 12 2015.

⁵⁶² *Itihād al-Sha'ab*, 15 July, 1959 as quoted in Su'ād Khayrī. *Min Tārīkh al-Ḥaraka al-Watāniya* [From the history of the Nationalist Movement], (Baghdad, 1975), at 151. It should be noted that Iraqi communist and nationalist intellectuals who were active in organizing the oil workers at the time carried in their pockets Yūsūf Ibrāhīm Yazbak's seminal book, entitled: *al-Nift Musta'bid al-Sh'wb* [*Oil, the Enslaver of Peoples*]. Published in 1934, this book was the first to be published in Arabic by an Arab author on the politics and imperialism of oil in the region. Yazbak was a Lebanese communist and one of the founders of the Syrian-Lebanese Communist Party. His aim was to illuminate the 'secret politics' of oil to the Arab reader and show how it was connected to imperial designs in the region. He writes, "O poor Arab, oil is your property and your devil; your lover and your enemy; your

no doubt that the Kirkuki workers were at that moment united in class solidarity like they never were before. In the words of the novelist Fadhil al-Azzawi, ‘the strike was a thrilling song fest’.⁵⁶³ The entire city was attracted to the garden, opening their doors to workers, while coffeehouses refused payment from any striker.⁵⁶⁴

On July 8, a new *mutassarif*, Hassan Fahmī, was appointed undoubtedly due to his predecessor’s slightly sympathetic approach towards the strikers. On July 10, the British Embassy councilor, Mr. Busk, urged the PM of the importance of ‘strengthening the hand of the mutassarif’ so that he could more effectively deal with the strike, and was told by the foreign minister that ‘new regulations’ were being drawn up to provide *mutassarifs* with wide executive powers ‘to arrest agitators without legal formalities’.⁵⁶⁵ Busk would later receive personal assurances from the PM that ‘any threat to the IPC’ would be dealt with ‘firmly’.⁵⁶⁶ Meanwhile, the new mutassarif released a statement, in which he was dismissive of the workers’ demands, maintaining that the current labour law already provided them with protection and that the IPC already made ‘concessions’ that would only be released once the workers returned to work immediately.⁵⁶⁷ The workers refused to end their strike until all their demands were unconditionally met. It was at this point that Fahmī decided that he would no longer tolerate the ‘illegality’ of the strike. He consequently dusted off an old Ottoman law still in the books (No.131 of 1910) that allowed the authorities to use force to disperse a crowd for the ‘protection of the public’.⁵⁶⁸

On the evening of July 12, while the workers were congregating in the Gāwūrbāghī garden, the police commander inaudibly ordered them to disperse. The workers, who did not hear his request, began chanting for the fulfillment of their demands. The commander then whistled and the police, who surrounded the garden from all sides, began to forcefully, disperse the crowd.⁵⁶⁹ The police ended up shooting at the crowd. As many as eighteen workers were killed

liberator and your enslaver...it is your life and your death, so know “something” of its politics so that you may know what [state] you are in and where you have arrived!” Yazbak, at 19.

⁵⁶³ Fadhil al-Azzawi. *The Last of the Angels*, (tr. William M. Hutchins), (New York: Free Press, 2007), at 52. This is an autobiographical novel where the Gāwūrbāghī strike and its aftermath are vividly described.

⁵⁶⁴ Khayrī, *supra*, ft. 562, at 150.

⁵⁶⁵ TNA. FO 371/52456. E7931/3860/93. ‘Strike at Kirkuk’. Busk to FO, No. 637. 10 Aug, 1946.

⁵⁶⁶ *Ibid*.

⁵⁶⁷ TNA. FO 371/52456; E6576/3860/93. ‘Strike at Kirkuk’ July 15, 1946; Humaidi, *supra*, ft. 549, at 435-436.

⁵⁶⁸ Humaidi, *supra*, ft. 545, at 437.

⁵⁶⁹ CP/CENT/INT/17/01. ‘The Slaughter of Kawer Baghi’, 31 Oct, 1946.

and twenty-seven wounded.⁵⁷⁰ As news spread of the massacre, there was public outrage throughout the land: it became clear that ‘the Iraqi government was prepared to kill Iraqi workers to defend the interests of a colonial company!’⁵⁷¹ The communists argued that there was ‘a high-combination of government and company,’ emphasizing the imperialistic character of the company and the Iraqi state’s collusion with it.⁵⁷² This was certainly not a far-fetched conspiracy as the records show.⁵⁷³ The Iraqi state was clearly acting on the advice of the British Embassy, which in turn were guarding the interests of the company. The workers were no longer dealing with a sophisticated abstract analysis given to them by the communist intelligentsia – the bullets that rained on them that day was all the proof they needed to grasp the semi-colonial character of the Iraqi state, its complicity in maintaining their conditions, and the effects of imperialism on their lives.

As a massive demonstration broke out the next day, where the crowd carrying the dead on their shoulders, demanded the resignation of ‘the government of bullets’ and to bring those responsible to court,⁵⁷⁴ the British government in London confirmed in a dispatch of their satisfaction with the actions of the local authorities that acted ‘wisely in defense of public security,’ and praised the ‘satisfactory attitude’ of the IPC throughout the strike.⁵⁷⁵ One of the workers in the demonstration rose up and said, ‘these dead are the victims of foreign influence and imperialistic interference’.⁵⁷⁶ The oil workers were now clearly consciousness of how imperialism and its legal manifestations created a space for such slaughter to occur. The British government, on the other hand, accepted the company narrative that the strike was ‘principally the work of political agitators,’ and ‘not the spontaneous result of discontent’ among the workers, with little to no scrutiny.⁵⁷⁷ Shortly thereafter, responding to a question in the House of Commons on the effects of the ‘stoppages of work’ at the IPC oil fields, the Secretary of State for Foreign

⁵⁷⁰ Humaidi, ft. 549, at 438. Batatu, *supra*, ft. 41, at 624.

⁵⁷¹ Khayri. *Min Tarikh*, *supra*, ft. 558, at 150-152.

⁵⁷² Batatu, *supra*, ft. 41, at 624.

⁵⁷³ The Minister of Interior, Abdullah al-Qassāb, also resigned in protest against the unjustified interference of the British Embassy and the company in the affairs of the governorate of Kirkuk. See al-Hasanī, *Tārīkh al-Wizarat* Vol. 7, *supra*, ft. 231, at 116-119. Al-Hasanī reproduces his resignation letter in its entirety.

⁵⁷⁴ al-Talibānī, *supra*, ft. 559, at 7.

⁵⁷⁵ TNA. FO 371/52456. E7051/3860/93. ‘Strike at Kirkuk of IPC’, July 19, 1946.

⁵⁷⁶ CP/CENT/INT/17/01. ‘The Slaughter of Kawer Baghi’, 31 Oct, 1946.

⁵⁷⁷ *Ibid.*

Affairs, Phillip Noel-Baker, without any mention of its violent suppression, affirmed that the strike has come to an end and assured his colleague that the ‘output of oil was not reduced.’⁵⁷⁸

At a press conference in Baghdad, the PM insisted that it was only due to the efforts of the government who negotiated with the company that certain ‘concessions’ were subsequently made and that strike action itself did not amount to anything.⁵⁷⁹ The Gāwūrbāghī massacre eventually led to the fall of the ‘Umarī cabinet, while the IPC decided to increase the minimum basic day wage from 80 to 140 fils and the total minimum basic day wage from 200 to 310 fils.⁵⁸⁰ However, the company refused to reopen the union. The IPC immediately embarked on long-term urban development projects (beginning with a housing scheme for IPC workers) endeavoring to shift its policy towards what was termed a ‘sociological’ approach for ideological and propaganda purposes.⁵⁸¹

The battle rapidly moved from the Gāwūrbāghī gardens to the streets of the large cities and finally to the courts, which were transformed into theatres of struggle ‘for the defense of the rights of the people.’⁵⁸² At least 150 lawyers came out in solidarity to the trial of the nearly two-dozen workers who were detained.⁵⁸³ They were all eventually released by order of the Kirkuk Penal Court.⁵⁸⁴ The new government ordered an investigation of the massacre, and a report was eventually released that found that the police were unprovoked, the workers were unarmed and that all the victims were shot in the back. The report also acknowledged that there was no security risk on the public as was alleged by the police, since the gardens were far from the city-center.⁵⁸⁵

⁵⁷⁸ TNA FO 371/52456. E7581/3860/93. ‘Strike of Iraq Petroleum Company at Kirkuk’, 1 August 1946. Oil production was not completely disrupted by the strike as the company maintained some workers within the fields who continued to work. In another dispatch, the fields manager stated that production was maintained thanks to the ‘superhuman’ efforts of British staff.

⁵⁷⁹ *al-Zamān*, July 19 1946.

⁵⁸⁰ Sālim al-Nū‘mān suggests that the IPC only agreed to a slight wage increase to distant itself from its involvement in the scandal of British interference in crushing the strike. Sālim al-Nū‘mān, *Al-Hizb Al-Shīyū‘ī al-‘Iraqī bi-qayādat Fahad* (‘The Iraqi Communist Party under the Leadership of Fahad’), (Syria: Al-Mada, 2007), at 195.

⁵⁸¹ TNA. FO 371/61673. E8010/1792/93. ‘Development of the Kirkuk Oil Fields’ 28 August, 1947. This approach involved ‘engaging in a little greater activity outside the purely technical side of procuring oil’ so as to establish ‘very good relations with the people in the locality of the oil fields’. See also Bet-Shlimon, *The Politics and Ideology of Urban Development*, *supra*, ft. 530.

⁵⁸² al-Talibanī, *supra*, ft. 561, at 6.

⁵⁸³ Resan Hussein, *supra*, ft. 557.

⁵⁸⁴ *Ibid.*

⁵⁸⁵ Al-Hasanī, *supra*, ft. 235, at 121. See Humaidī, *supra*, ft. 545, at 442 for the detailed findings of the investigation.

The Minister of Interior, convinced of these conclusions, requested the resignation of the police commander of Kirkuk. However, the PM refused and the commander was merely suspended.⁵⁸⁶

Workers representing fourteen trade unions subsequently submitted a petition to the PM demanding that the IPC and their administration be held accountable in Iraqi court.⁵⁸⁷ This did not happen. Iraqi law and justice were unable to penetrate the semi-colonial legal structures (maintained by the 1930 Treaty) that were shielding the company. I will return to this in due course, but first I will briefly examine certain aspects of the narrative described above concerning the question of political agitation and the ideology of trade unionism.

V. A critique of a company narrative & a semi-colonial ideology of trade unionism

The company's narrative of the strike, which was accepted by both the British Embassy in Baghdad and the Foreign Office in London, was that it was contrived by outside political agitators. However, as our narrative above suggests the causes of the strike were evidently based on genuine grievances of economic exploitation by the company in an extreme environment of semi-colonial subservience. The strike could not have been singlehandedly instigated by external political agitators, but it was rather a strike initiated by the workers themselves.

A close reading of British records reveals the contradictions inherent in the company narrative. The IPC official, Mr. Wheatley, refused to consider that the company was at any fault, preferring the explanation that the arrival of a handful of outside communist 'political agitators' from Baghdad, supposedly in one swoop (in a mere couple of days) got the workers to strike.⁵⁸⁸ This he argued happened thanks to their use of 'a weapon, which was not customary in England, namely, intimidation'.⁵⁸⁹ Spontaneity was therefore rationalized as actual evidence of political agitation and violence rather than illustrating the workers' own organizational efforts. For this reason, Wheatley was convinced that in fact 'practically the whole of our local staff and labour

⁵⁸⁶After the fall of the monarchy, al-Qassab claimed that it was in fact at the insistence of the British Embassy that the police commander and mutasarif were not dismissed. See Najat Kawthar Oughlo, *Safahāt Min Tarīkh Kirkuk minthū Fajir al-Tarīkh ila 1958* [Pages from the history of Kirkuk from the dawn of history until 1958], (London: Dar al-Hikma, 2015), at 454.

⁵⁸⁷ See Fa'q al-Būtī. *Mawsu' a al-Sahafīya al-'Iraqīa* [The Encyclopedia of Iraqi Journalism], Baghdad: al-Mada, 2010), at 270-271 for a copy of the petition.

⁵⁸⁸ TNA. H. N. Wheatley to K. Stock, 30 July 1946. FO 371/52456. E7455/3860/93.

⁵⁸⁹ *Ibid.*

did not wish to strike'.⁵⁹⁰ In addition, he went so far as to claim that the 'undoubted support' of the Russian delegation in Baghdad was at play.⁵⁹¹ More interestingly, he rationalized the solidarity between the workers that emerged during the strike as a result of 'Arab resentment' over Palestine. The 'question of Palestine,' he said, 'was a very serious matter for the company,' as it was the one issue that united all workers (Arabs, Kurds and Assyrians) and the agitators used it to manipulate the workers to strike.⁵⁹²

The complete dissection of the economic grievances from the political aspects of the strike was a reoccurring feature of the dispatches to London. Company statements were recycled uncritically throughout: the IPC workers described as being the best-paid workers in the country, and the company referred to as the most 'enlightened' employer in Iraq. These claims, and in particular that of definite political agitation, were so overstated in the dispatches that some British officials in London could not help but question this narrative. Even the Secretary of State, Ernest Bevin, for instance, a former trade unionist, was shocked to learn that the strike was not analyzed as an industrial dispute in any way. Asking for more information on whether the workers were in fact treated fairly by the company, he emphasized that 'men do not strike for political reasons unless they have also real [economic] grievances'.⁵⁹³ The responses to these criticisms tended to be that even if economic grievances existed, they were surely exploited by political agitators.

The other line of reasoning in the company narrative that was generally accepted by London was that political agitation was clear because the workers were given a 'substantial increase in their cost of living allowances' (which was not an actual wage increase)⁵⁹⁴ only two days before the strike was initiated.⁵⁹⁵ The workers' rejection of this offer was seen as being completely irrational. As is evident from the counter-narrative, the IPC workers did not merely strike for a wage increase or quantifiable benefits, but were insistently concerned with regaining their *dignity*, which was a matter of principle.⁵⁹⁶ This was clear from their most significant

⁵⁹⁰ *Ibid.*

⁵⁹¹ *Ibid.*

⁵⁹² *Ibid.*

⁵⁹³ TNA. Minutes by Howe, 22 July 1946. E7015/3860/93. FO 371/52456. 'Strike at Kirkuk of IPC', July 19, 1946.

⁵⁹⁴ Around two shillings or one dinar.

⁵⁹⁵ TNA. Minutes by Howe, 22 July 1946. E7015/3860/93. FO 371/52456. 'Strike at Kirkuk of IPC', July 19, 1946.

⁵⁹⁶ Davis, Eric; "History for the Many or History for the Few? The Historiography of the Iraqi Working Class," in *Workers and Working Classes in the Middle East*, Lockman, Z. (ed.), (New York: SUNY Press, 1994), at 292.

demand, which was their continuous assertion that the company adhere to the law, in particular the labour law. This for them could only materialize if they were allowed to form their own *independent trade union*. Finally, the ending of the common practice of discharging workers at will (in a manner that circumvented the labour law) was another significant demand. This practice, which occurred in the context of a marked racist environment was a very sensitive issue for the workers indeed.⁵⁹⁷

Wheatley's conception of Iraqi workers was not merely one that was dehumanizing in that it took away from the workers' agency, but it was also based on the orientalist and racist idea that Iraqi workers were unable to think for themselves as to what was good for them, and that they were easily manipulated en masse by a few political saboteurs. There tended to be two explanations given for such an analysis throughout the British records. First, the Iraqi is often described as being governed by a certain irrational and emotional temper that makes him prone to external agitation. This is best reflected by one British official's statement that 'the Iraqi is like a gypsy dancing girl who when she hears the voice of the drum must dance. In other words, Iraq is a fertile field for agitation'.⁵⁹⁸ Any sober organizational and strategic planning on the part of Iraqi workers was therefore completely discounted as an explanation for effective strike action. Even the 'leftist' and communist pamphlets that were in circulation at the time were seen as impossible to have been 'drawn up by an Iraqi mind'.⁵⁹⁹

Second, this denial of Iraqi agency was generally conveyed in parallel with reference to a vague subversive (external) invisible hand that continuously overshadowed Iraqi agency. There was no way that Iraqi workers were acting on their own and for their own specific interests. This could not possibly have been a sound explanation for analyzing the Middle East, the land of endless mystery and subversive intrigue. This denial of agency reverberates in what Priya Satia has argued in her description of the underpinnings of British thought in Arabia: '[a]ll Middle Eastern avowals of nationalism [or anti-imperialism] were degraded and delegitimized by absorption into a grand conspiracy of indeterminate authorship'.⁶⁰⁰ This conspiracy theory was indeterminate as there could not be 'a single mastermind' behind them, because 'Orientals did not

⁵⁹⁷ See pp.126-128 above.

⁵⁹⁸ TNA. C.S.J. Berkeley, Office of the Political Adviser, Nasiriyah to British Embassy, Baghdad. FO/624/72. Communism: 323/5/45. (14 Sep, 1945).

⁵⁹⁹ TNA. Minutes by Walker, British Embassy Bagdad, 120/11/84, 8 Jan 1947. FO/624/116.

⁶⁰⁰ Priya Satia. *Spies in Arabia: The Great War and the Cultural Foundations of Britain's Covert Empire in the Middle East*, (Oxford: OUP, 2008), at 226.

posses individual minds as such,' but rather 'a collective existence, made possible by the magic information network' of spies and subterfuge.⁶⁰¹

By way of contrast, as one veteran Iraqi communist who experienced the event pointed out, what made this strike unique was precisely the workers' participation in the administration of their own strike action.⁶⁰² It was only natural that the communists would guide the workers in matters of strategy and tactics, but it was the workers' own agency of organization that steered the strike and theirs alone.

The IPC as well as the British learned some vital lessons from the events of the Gāwūrbāghī strike and as mentioned earlier the company immediately began to undertake a shift in their policy to what one British diplomat referred to a 'sociological' approach towards their workers and the city as a whole; that is, one that would put more emphasis on social and urban development, in particular housing schemes and educational projects for their workers. As significant was the appointment by the British Embassy in Baghdad of a labour attaché, and by Iraqi government of a full-time labour advisor.⁶⁰³ The escalation of labour troubles and strikes in the coming years would lead the IPC to eventually appoint a Chief Labour Officer,⁶⁰⁴ as well as, Information Officers a few years later with the task of keeping in contact with the Baghdadi press, so as to directly respond to criticisms of the company in the press.⁶⁰⁵ These defensive measures had some significant ideological motivations, including countering the influence of communism, but especially urgent was the demonstration that Britain (with its commercial and industrial enterprise) was 'the world's pioneer in the promotion of social justice'.⁶⁰⁶

The IPC's 'sociological' effort was meant to bring about some changes in workers' conditions providing them with transportation, hospitals, maternity and infant welfare centers, cinemas and above all housing.⁶⁰⁷ The housing scheme in particular was meant be a 'tangible

⁶⁰¹ *Ibid*, at 223-224.

⁶⁰² al-Nū'mān, *supra*, ft. 580, at 194.

⁶⁰³ TNA. Busk (Bagdad) to Baxter (London), 17 August 1946. E7015/3860/93. FO 371/52456.

⁶⁰⁴ 6635

⁶⁰⁵ TNA. FO/624/176. Oil: IPC Labour.

⁶⁰⁶ TNA. Douglas Busk, Baghdad to Ernest Bevin, 13, August 1946. LAB 13/193.

⁶⁰⁷ TNA. FO/624/105. Oil: Iraq Petroleum Company Labour Welfare, Nov 20, 1946. One British official was quite blunt about the significance of social development for propaganda when he wrote, 'Propaganda through medical work is extremely effective and every possible effort should be made to increase medical staff'.

manifestation' of the IPC's 'goodwill'.⁶⁰⁸ By 1950, according to a British report, 246 'bungalows' were built on the new Arrapha Estate for Iraqi staff, and within five years that figure rose to over 450 houses.⁶⁰⁹ The Company would develop a home-ownership scheme for the very purpose of furthering this ideology and so as to appear to be contributing to Kirkuk's economy and development.⁶¹⁰ The hope was that such an approach would prevent more labour strikes from happening, allowing the company to appear favorably to the public. The supply of electricity to the municipality, for instance, led one pro-British Iraqi newspaper to praise Kirkuk, describing it as the 'the city of black-gold' where 'the company [IPC] supplies electricity from which all is benefiting'.⁶¹¹

The company would later refer to this tailored approach in a confidential and exhaustive report, commissioned and released in 1955 (partly as a result of the nationalization 'crisis' in neighboring Iran) as the 'integration approach', which was aimed at integrating the company (including its subsidiaries the B.P.C. and the M.P.C.) into the Iraqi economy, on the one hand, and making the company 'more acceptable to the Iraqi way of life' and community on the other.⁶¹² The overall goal of the approach was to 'secure the position' of the company, 'beyond disturbance *in any event*' and to prevent nationalization at all costs.⁶¹³ In terms of the non-economic aspect of the approach, the point was to break out of the 'physical and mental compounds, the *imperium in imperio* which they [i.e. company officials] tended in the past to inhabit'.⁶¹⁴ This approach was therefore a pre-emptive measure that came out of the experience of the Gāwūrbāghī strike. I will not get into all the details of this important report, but rather

⁶⁰⁸ TNA. FO 371/52456. E12108/3860/93. 'Iraq Petroleum Company's Housing Scheme', Dec 10, 1946.

⁶⁰⁹ TNA. W.J. Hull, 'Visit to IPC, Kirkuk Fields, 15-18 August 1950,' August 1950, LAB 13/672; 'Guide to Kirkuk,' c. 1955, File 119015, BP. This was referred to as the 'Creole Housing Policy' as it was tried and tested in Venezuela in 1949, a few years before Kirkuk. The IPC's Managing Director, H.S. Gibson admitted that it failed its objectives in the end as it further segregated communities and allowed workers to develop 'class consciousness': 'the construction and upkeep of permanent company quarters is not only costly but fails to satisfy any objective...[especially as] it has the advantage of setting up a class-conscious section within a community which must always be avoided'. H.S. Gibson to Hoard Page, London, 10 July 1952. BP 135818.

⁶¹⁰ BPA. 'Notes on IPC Group Meeting on 9th November 1950,' File 60550, BP.

⁶¹¹ BPA. *Al-Sha'b*, 3 August 1950 enclosed and translated in HH. Wheatley to Sir John Cunningham, 29 August 1950, File 135819, BP.

⁶¹² BPA. John Murray. *Policy and Practice of the Iraq Petroleum Company, Limited and Associated Companies in their Economic and Other Relations*, (in Two Volumes), London, 31/12/1955, File 4656 BP, at i. This report was commissioned after industrial strikes continued to escalate between 1948 and 1954. The aim was to develop an approach that would 'prevent nationalization and expropriation of the IPC' by eliminating 'the climate of opinion which is favorable to nationalization'.

⁶¹³ *Ibid*, at 3, emphasis in original.

⁶¹⁴ *Ibid*, at ii.

focus on the section that deals with the company's treatment of workers,⁶¹⁵ in particular the question of trade unions. Despite taking a similar view with regards to the role of communist political agitation as mentioned above this time with regards to the Basra Strike of 1953, the author stressed that 'a foreign company...cannot afford to treat its Iraqi personnel worse than its foreign ones'.⁶¹⁶ Consequently, the company, he emphasizes, must treat its workers 'so obviously good' that people 'merely laugh' at any 'propaganda' that claims otherwise.⁶¹⁷ One of the primary efforts focused on was the development of 'joint consultation' committees as a substitute for independent trade unions and its relation to the law.

After the suppression of the Gāwūrbāghī strike and the trade union that organized it, the IPC reintroduced the 'joint consultation' worker committees, which were considered as adequate substitutes for independent trade unions. Despite the fact that the British Embassy encouraged the formation of 'genuine trade unions' amongst the oil workers of Kirkuk, this really meant unions (and committees), which were pro-British and anti-communist.⁶¹⁸ This was therefore, a part of a broad top-down ideology of trade unionism that was aimed at the Iraqi labour movement.

In fact, the British government was constantly concerned with establishing new devices to co-opt the labour movement in Iraq. 'We should endeavor,' a Foreign Office official in London wrote, 'to put into control of labour unions in Kirkuk...labour leaders who are known to have anti-communist views.'⁶¹⁹ Another official reiterated this position by arguing that 'medical rather than surgical measures' must be used to treat communism, and this could only be done by 'jockeying' into control of the labour unions in Kirkuk 'a non-communist labour leader'.⁶²⁰ Similarly, the 1955 company report suggested that government unions should be encouraged, as they would form at once, 'a safety valve and a point of contact'.⁶²¹ Referring to the assessment of the IPC's Personnel Adviser, the author illustrates the manner in which government-sponsored rather than independent trade unions would function:

It is possible that they [i.e. government unions] may not be effective for some time; but, in the words of the Personnel Adviser, "it is the Communist-inspired ad hoc 'union' that is to be feared at this

⁶¹⁵ *Ibid.*

⁶¹⁶ *Ibid.* at Chapter XII, at 4.

⁶¹⁷ *Ibid.*

⁶¹⁸ TNA. Bagdad to FO, 12 July 1946, FO 371/52459.

⁶¹⁹ *Ibid.*

⁶²⁰ TNA. Minutes by RMA Honkey. FO 371/52459. E6246/5857/93. 'Communism in Iraq', 4 July 1946.

⁶²¹ BPA. John Murray, *supra*, ft. 612, at 11.

stage and not a Government-organized union. The latter frequently provides a harmless outlet for the aspirations of potential trouble-makers who become so preoccupied by the internal organization and politics of the union that they forget the purpose for which it was formed". This is a useful, if slightly Machiavellian, point.⁶²²

The government-sponsored unions would therefore function in the same way as the company's joint consultative committees – to insulate and depoliticize the workers and ultimately pacify any form of genuine struggle against the company. A Machiavellian technique if ever there was one.

The IPC established an administrative machinery to deal with disputes in the form of joint consultative committees (as well as general welfare committees) as a way for workers and management to communicate on issues of mutual interest. These committees were ultimately unsuccessful, as all the 'best workmen' considered them as having been discredited by the recent strike, especially seeing that those who led the former committees were opposed to the strike.⁶²³ It did not help that dialogue in these committees was heavily restricted by management, who did not allow any discussion on matters covered by the labour law or which concerned wage rates.⁶²⁴ This was the same criticism made by the author of the 1955 company report, who argued that these committees were supposed to address questions of production, but this was rarely done.⁶²⁵ Instead, the committees' merely acted in an 'advisory' capacity and became a forum where workers could make suggestions on efficiency, welfare and educational issues.⁶²⁶ The company acted like a 'benevolent paternalist' in the settlement of disputes.⁶²⁷ There was therefore more than a general lack of interest in joining these committees, for most workers did not want to be seen as 'stooges' of the company.⁶²⁸

In any case, the ideology of trade unionism that emerged at the IPC after the strike was clearly advanced to undermine the workers' ability to run their own unions. It was therefore not out of genuine concern for the workers that they were put into place, but rather to control and 'keep tabs' on them.⁶²⁹ Furthermore, the new IPC fields' manager, Mr. Mainland, who was hired after the strike, was described by a British Embassy councilor, as 'a nervous individual' who was

⁶²² *Ibid.*

⁶²³ TNA. FO 624/105, *supra*, ft. 607.

⁶²⁴ Albert Badre & Simon Siksek. *Manpower and Oil in the Arab World*, (Westport: Hyperion Press, 1960), at 183.

⁶²⁵ BPA. Murray, *supra*, ft. 612, Chapter XII, at 13.

⁶²⁶ See TNA. LAB 13/1634. Hull, 'Iraq Labour Memorandum No. 4' August, 1950; for details on the workings of these committees; Albert Badre & Simon Siksek, *supra*, ft. 624, at 184.

⁶²⁷ Albert Badre & Simon Siksek, *supra*, ft. 624.

⁶²⁸ *Ibid*, at 187.

⁶²⁹ TNA. FO 624/105. 'Oil: IPC Labour Welfare', 25 October, 1946.

‘preoccupied by the dangers of subversive elements’ and was determined to cleanse the company of political agitators.⁶³⁰ After visiting the oil fields, the councilor explained the ideological basis of this new developmental policy, referring to it as ‘Calpurnian,’ that is, one that would ensure that the company was ‘above suspicion’.⁶³¹ This he wrote could only be done if they endeavored to achieve ‘occidental [labour] standards’ in Iraq.⁶³² In other words, if the company would at least appear to be treating their workers on the basis of (‘civilized’) ‘western standards,’ they would be beyond reproach and no one would be able to criticize them for not following the (‘uncivilized’) labour law of the state. Even in the midst of the strike, the British Ambassador, Stonehewer-Bird, suggested that the company did not have to ‘stick strictly’ to the Iraqi labour law as long as it treated its workers by what it regarded as Western or British standards.⁶³³

Here, one could see that this so-called new policy as it was applied to trade unionism was merely meant to reinforce the company by putting it in an ‘invulnerable’ position⁶³⁴, as it allowed it to once more avoid the labour law whenever it pleased by reference to its ‘enlightened’ occidental standards. These colonial double standards were precisely what the workers were opposed to when they decided to strike. In many ways, this strategy was effective as the newly appointed labour attaché, A.T. Audsley, visiting the IPC a couple of years later would come to the conclusion (again) that the company provided ‘more favorable conditions than the labour law’.⁶³⁵

As an alternative to this narrative, a ‘law and space’ approach provides a more coherent explanation for why it was that Iraqi law was ultimately unable to penetrate into the concessionary space of the company by holding it accountable for what happened at Gāwūrbāghī.

VI. Law & Space in the Iraqi Oil Frontier: the pipelines of law in a desert space

Returning to the overarching argument of Chapter 3: the semi-peripheral sovereignty granted to Iraq under international law which was discussed in a previous chapter, functioned in tandem with the (1931) oil concessionary agreement, contributing to the specifically tense social conditions in Kirkuk. In fact, I went further to suggest that semi-peripheral sovereignty was

⁶³⁰ *Ibid.*

⁶³¹ *Ibid.*

⁶³² *Ibid.*

⁶³³ TNA. E7015/3860/93. FO 371/52456. Stonehewer-Bird to Sargent, 9 July 1946

⁶³⁴ TNA. FO 624/105, *supra*.

⁶³⁵ FO 371/68458. E12918/77/93. M.T. Audsley, Report on Visit to Iraq from June 8th to 10th, 1948.

constructed *for that very purpose* – that is, to allow the oil company to function with a certain amount of operational freedom. Hence, the already expanded powers that the company received from the concessionary agreement were further bolstered by the weak sovereignty of the Iraqi state. This surely had a hegemonic influence on the social and economic dynamics of Kirkuk and Iraq as a whole. Vast material socio-economic transformations occurred in the city, which in turn had an impact on the laboring classes as I have already described in detail above. Furthermore, it was precisely because the company was somewhat shielded by an assemblage of these legal structures that it was able to completely evade any liability for the murder of workers by their local henchmen at Gāwūrbāghī.

Here, the law played a significant role in the social production of the *space* of the oil city of Kirkuk. This space as a part of the Iraqi oil frontier and its international dimensions could not have operated without the unique legal infrastructure put into place and the streamlining of all its parts in tandem. Hence, following from those scholars who have highlighted the constitutive connection between law and space, the analysis becomes clearer; it explains why the tensions described earlier manifested in such a way culminating into violence.⁶³⁶ It also explains the spatiality of law and how it shielded the company, contributing to its power and impunity in its operations.

In fact, the law of concession is itself a perfect illustration of how law could completely alter the geography and space that is its subject.⁶³⁷ A ‘concession’ has been defined as a grant or license granted by a state to a private individual or a corporation (‘the concessionaire’) to undertake works of public character extending to a considerable period of time, and involving the investment of substantial capital and expertise.⁶³⁸ An oil concession is one that is generally granted as an exclusive right to ‘search for, obtain, exploit, develop, render suitable for trade, carry away export and sell petroleum’.⁶³⁹ Despite having an international character, a concession

⁶³⁶ See Nicholas Blomley. *Law, Space and the Geographies of Power* (New York and London: Guilford Press, 1994); Tayyab Mahmud. “Law of Geography and the Geography of Law: A Post-Colonial Mapping” *Jurisprudence Review*, vol. 3.064, (2010), pp.64-106; Andreas Philippopoulos-Mihalopoulos. “Law’s Spatial Turn: Geography, Justice and a Certain Fear of Space” *Law, Culture and the Humanities* (2010), XX(X) 1-16.

⁶³⁷ As Simon Siksek illustrates, the operation of an oil concession in particular possess unique characteristic since, ‘it destroys the very substance of the concession’ attacking the very substance of the mineral resources for which the concession is granted. Simon Siksek. *The Legal Framework for Oil Concessions in the Arab World* (Beirut: The Middle East Research and Publishing Centre, 1960), at 7

⁶³⁸ Simon G. Siksek, *ibid*, at 4-5.

⁶³⁹ Henry Cattan. *The Evolution of Oil Concessions in the Middle East and North Africa*, (New York: Oceana Press, 1976), at 2.

contract is recognized as being governed by the municipal law of the local jurisdiction and not international law.⁶⁴⁰ However, in this case, whereby a foreign company was granted wide powers in a concessionary agreement by a weak state (which was itself dependent on the company for its finances), it is clear how the law of the state cannot truly be enforced on the company.

In any case, concessionary agreements had a very specific function, as they were instruments initially used by the oil industry to effectively generate ‘transfers of sovereign powers over vast tracts of land’ to foreign companies for long periods of time, for payment of a fixed royalty calculated by the quantity of oil produced.⁶⁴¹ As Sonarajah states, only an arsenal ‘web of power’ exerted by the home state alongside ‘a concentrated dominance exerted within the international system by the dominant powers’ could ultimately maintain these concessionary agreements.⁶⁴² The concession therefore contributed rather violently to the production of this (oil) space. It is in this context that the IPC caused certain social tensions within its space, for unregulated by the state; it was instead ruled by what could be referred to as the international law of primitive accumulation.⁶⁴³

To clarify further, Kirkuk, as a part of the oil frontier where oil extraction occurred at a ‘specific, focal point of its location,’ constituted a *uniquely* situated space in the international machinery of imperialist oil production in the region and the world capitalist economy.⁶⁴⁴ It was this specificity that made it both the center of imperialist capitalist exploitation, as well as, the very beating heart of anti-imperialist struggle in Iraq. The oil frontier is, as Michael J. Watts has shown, already a unique space in that not only does it function on its ‘own temporalities and spatialities’ of global capitalism,⁶⁴⁵ but also operates within ‘an astonishing spatial patchwork, a quilt of multiple, overlapping, and intersecting spaces of territorial concessions, blocs, pipelines, risers, rigs, flow stations, export terminals... [It is, in other words] a cartographer’s dream-space: a landscape of lines, axes, hubs, spokes, nodes, points, blocks and flows.’⁶⁴⁶ The IPC in the oil

⁶⁴⁰ This was firmly established in the *Anglo-Iranian Oil Co. (Jurisdiction) Case* (1952).

⁶⁴¹ M. Sonarajah. *The International Law of Foreign Investment: Second Edition*. (Cambridge: Cambridge University Press, 2004), at 40.

⁶⁴² *Ibid.*

⁶⁴³ Mark Neocleous. “International Law as Primitive Accumulation; Or, the Secret of Systemic Colonization” *European Journal of International Law*, (2012) Vol. 23, no.4, 941-962.

⁶⁴⁴ Thad Dunning & Leslie Wirpsa. “Oil and the Political Economy of Conflict in Colombia and Beyond: A Linkage Approach” *Geopolitics*, Vol. 9, No. 1 (Spring 2004), pp.81-108; at 82

⁶⁴⁵ Michael J. Watts. “Securing Oil: Frontiers, Risk, and Spaces of Accumulated Insecurity,” in Hannah Appel, Arthur Mason & Michael Watts (eds.), *Subterranean Estates: Life Worlds of Oil and Gas*, (Ithaca: Cornell University Press, 2015), pp.211-236; at 221.

⁶⁴⁶ *Ibid.*

city of Kirkuk operated on similar lines. Its space was a dynamic and multilayered network, which was ultimately connected across pipelines and pumping stations to the ports and cities of the Mediterranean. As Iraq's gateway to the world – the point where the 'Third River' of 'black gold' flows from; it was also where order and disorder manifested; where violence ultimately broke, and where the tensions of capitalist modernity were reproduced.

In parallel to and constitutive of this spatial specificity was a legal specificity, which made all this a reality in many ways, for before pipelines could be designed and erected, one would need to construct the *legal space for this to even be a possibility* – the 'primordial straight line' drawn on the map if you would. The law and its structures played a prominent role in bringing all this about. For example, semi-peripheral sovereignty allowed for the triangular relationship between the company, the British and the Iraqi government to *appear* to be functioning at a certain arms-length, when in fact this was not the case as we have seen in our narrative, where their processes were so much closer and at times entirely interconnected – the Gāwūrbāghī strike and massacre being a perfect illustration of this. The British government frequently evoked Iraqi (semi-peripheral) sovereignty to continuously put the blame on the Iraqi government for all its shortcomings in its dealing with the labour question, diverting from their own responsibilities. Iraq was an 'independent' and 'sovereign' state after all, notwithstanding the influence the British had through its advisors.

Only a couple of years after the Gāwūrbāghī strike, after the *Wathba* uprising in 1948, the labour attaché to the British Embassy, M.T. Audsley, released a report whereby he used the same inconsistent and contradictory line of reasoning in that, on the one hand, he severely criticized the 'feudal reactionary character' of the Iraqi government in its dealing with the working class, while, on the other hand, he recommended the following 'security' measures when dealing with any labour troubles in the IPC: "If the Government is unwilling or unable to put its house in order...we must always have a strong and pro-British Mutasarrif, Commandment of Police, and G.O.C. 2nd Division who have instruction to make it clear at all times that the IPC is a vital Iraqi interest, and that *incitement of our labour ranks is a crime against the state*. At the same time, care should be taken in the appointment of judges to Kirkuk, and the Ministry of Justice should instruct the President of the Courts that *no lenient treatment is to be given to cases of incitement*

of labour to strike.”⁶⁴⁷ This is a remarkably candid recommendation and in many ways illustrates exactly how the complicity of the triangular relationship functioned during the Gawūrbāghī strike in 1946. The labour attaché (who acted more like the labour strike ‘fixer’) was therefore merely conjuring up an already tried and tested method of labour suppression.

VII. Pressure Points of Oil Imperialism & Capitalism; or how to use space to sabotage law

The concluding angle in this narrative invokes another episode in the labour history of Iraq that advances my argument about the spatiality of law, namely the massive strike of the oil workers at the K3 pumping station in the isolated desert town of Hadītha, which took place during the revolutionary period of the *Wathba* uprising in April of 1948.⁶⁴⁸ As mentioned earlier, the K3 pumping station was one of the most important pipeline stations whereby oil flowed through the desert out to Mediterranean ports and to the world – it was the critical point of bifurcation.

Although the idea of a strike there originated with the communist party, it was only after organizing a mass meeting of 3,000 workers when a resolution agreed to undertake wildcat strike action. Led by a charismatic communist labour organizer by the name of Shanwar Oūda,⁶⁴⁹ the strike began the following day on the 23rd of April. Almost immediately, a series of ad hoc committees emerged: a strike committee, which kept out of view was considered the ‘living brain of the strike’; a negotiating committee, which although a façade of the strike committee was also its ‘chief lever;’ an organizers’ committee tasked to select orators and poets; and a strike’s prefects led by the chief of the guard.⁶⁵⁰ The prefects were tasked to oversee meetings and gatherings by preserving order and discipline. Station patrollers took shifts to enforce the strike. A picket guard controlled those who entered or exited the station, ensuring that, except with the written permission of the strike committee, ‘not even a pint of gasoline’ would leave the station.

⁶⁴⁷ TNA. FO 371/68482. ‘Report on visit to Iraq from 8th June to 10th July by M.T. Audsley’ (1 November, 1948); Appendix D, ‘The Security Situation in Iraq as it Affects the Company,’ at 3.

⁶⁴⁸ The *Wathba* will be dealt with in detail in a following chapter.

⁶⁴⁹ Oūda was a former schoolteacher who was dismissed by the authorities for spreading communist propaganda in 1946. He found his way into the employ of the IPC as a mechanic to make ends meet. He was later imprisoned, tortured and killed by the Ba’athists during the 1963 coup. See Fāyez Haīdar. “Meḥdi (Shanwar) Oūda : Qa’id ‘Umālī Salib wa Masīra Yathkurūḥa al-Tārīkh” (“Meḥdi (Shanwar) Ouda: A steadfast labour leader and a March remembered by history”), *al-Hiwār al-Mutamadin*, 2009/6/5, (<http://www.ahewar.org/debat/show.art.asp?aid=174173>).

⁶⁵⁰ Batatu, *supra*, ft. 41, at 625.

The entire K3 pumping station, which at that point was in full workers' control, came to a complete standstill.⁶⁵¹

The main demands of the workers encompassed the following: a wage raise of 25% for workers of grades (0-1) and 50% for those of grades (3-5); the enforcement of the labour law; providing K3 workers the same amenities as those given to the Kirkuk (K1) workers; adequate housing and transportation; making Saturday a half-day; ending the constant overseeing of workers during the day by security guards; ending the practice of dismissals at will and fining; and dismissals for taking strike actions.⁶⁵² The company's response was not only to regard the strike a 'breach of the law,' but also to make the typical accusation that it was not a genuine industrial dispute, but rather 'a subversive movement' concocted by the communist party.⁶⁵³ The British Vice-Consul in Baghdad seemed rather astonished when he admitted that, 'the strike was from the outset organized with remarkable efficiency. The strikers took over the whole plant and picketed the ferry across the river Euphrates near Haditha and all roads leading to the camp'.⁶⁵⁴ The exceptional organizational capacity of the strikers was attributed, as it was earlier, as actual evidence of outside political influence rather than stemming from the actions of the workers themselves.

Although the company eventually conceded to some minor demands, it rejected the key demand of a wage increase. The strike committee refused to back down, and the workers' spirits remained high. By May 5th, a squadron of nearly 30 armored police cars arrived on the scene, circling the station and workers' quarters with machine guns. Shortly thereafter, the celebrated poet, Mohammed Mahdī al-Jawāhirī, furiously wrote in a newspaper in Baghdad: 'Do they want to repeat the Gawūrbāghī massacre!'⁶⁵⁵ The strike committee, who at first unsuccessfully tried to 'enlist the sympathy of the [police] rank and file', then ordered the workers to stay away from the police and avoid confrontation at all costs.⁶⁵⁶ The British Vice-Consul, who considered Oūda a communist 'fanatic', wrote of his organizational methods, that he maintained firm discipline,

⁶⁵¹ TNA. FO 371/68479. Telegram No. 478 from Mack, Bagdad to FO, 4 May, 1948. E65768/620/93. 'Strike on the Iraq Petroleum Company's Pipeline' 5 May 1948.

⁶⁵² al-Humeidī, *supra*, ft. 549, at 563-564.

⁶⁵³ TNA. F. Wells Minute, 14 May 1948. E7302/620/93. FO 371/68479. 'Strike on Iraqi Petroleum Co Pipeline', 21 May 1948.

⁶⁵⁴ *Ibid.*

⁶⁵⁵ *Jarīda al-'Asūr*, Issue 14, 9 May 1948, as quoted in al-Humeidī, *supra*, ft. 549, at 571.

⁶⁵⁶ TNA. F. Wells Minute, 14 May 1948. E7302/620/93. FO 371/68479. 'Strike on Iraqi Petroleum Co Pipeline', 21 May 1948.

‘repeatedly impressing upon the strikers the necessity for avoiding violence whilst at the same time showing that they were effectively under control’.⁶⁵⁷

A couple of days later, the police cut off food rations, water and electricity from the station. Realizing that they could not rely on the local bread offered by the neighboring villagers for long and insisting on avoiding what would be a certain violent confrontation with the police, the workers held a meeting where they decided to march to Baghdad, 250 kilometers away to present the government with a petition comprising of their demands. Therefore the next morning on the 12th of May, the workers of K3 began their long journey to Baghdad. At the head of their column they carried a banner that read: ‘We the Oil Workers Have Come to Claim Our Violated Rights’.⁶⁵⁸

By the time the workers crossed twenty-four kilometers to Hurān valley, they were exhausted and fatigued from the scorching heat. Taking shelter in the closest village of al-Baghdadi, many of them lost consciousness. As rumors spread, eight trucks carrying food and water arrived for them in solidarity from the people of Hīt. Their brethren drove them back to Hīt where they took repose. The next day on May 13th, the K3 workers left Hīt on foot. Enduring their journey, only to be knocked by the desert sun at noon, at which point they were offered hospitality from the tribe of the al-Muhamadī, who fired rifles and chanted tribal songs in their honor. When the sunset, they returned to the sandy road, sightlessly trailing in the dead of night. In the morning, they realized that they arrived in a place called al-Warrār, one kilometer north of Ramadī and 126 km west of Baghdad. Mounting on small handmade boats, the workers began traversing the Euphrates to get to Ramadī. When they reached the other side of the river, still raising their large banner, they continued to march until they approached a bridge that led to Fallūjah. There the police were waiting for them. It was a trap. The K3 workers were apprehended approximately 60 km from their destination. Although some were returned to Hadītha, Oūda and the strike leaders were all arrested and charged under martial law.⁶⁵⁹

This heroic episode of labour struggle, which would later be known as ‘al-Masīra al-Kubrā’ (The Great March), was to assume legendary significance in the annals of Iraqi and labour historiography. I have recounted the entire narrative so as to make several points to illuminate my

⁶⁵⁷ *Ibid.*

⁶⁵⁸ Batatu, *supra*, ft. 41, at 625.

⁶⁵⁹ This narrative of al-Masīra was based on Batatu, *ibid*, at 625-627.

argument on legal spatiality. It was only after the K3 workers decided *where* in the unique imperial map they were situated in to undertake strike action, were they able to very effectively interrupt the operations of oil production and hit imperialism where it hurts, while they asserted their normative demands, which they regarded as their *legal rights*. The workers used spatiality as a strategy so as to counter the legal spatiality of imperialism itself. It was their grasping of the spatial map of the Iraqi oil frontier – the network of oil pipelines and the manner in which they were all interconnected in the whole region – that allowed them to assert their interpretation of the law. In fact, they were directly challenging the legal structures that were imposed upon them; the semi-peripheral sovereignty which was maintained by the Anglo-Iraq Treaty that was months earlier challenged in the streets of Baghdad during the *Wathba*, was the same legal configuration that was challenged by them during their strike in an isolated town in the middle of the desert.

This narrative and the workers’ control of the pumping-station is a great example of the spatiality of law– that is, how legal structures are spread out in a spatial configuration. Timothy Mitchel has implicitly emphasized this link between spatiality and law in the context of the oil frontier in the region when he wrote: ‘in building the infrastructure of oil, the petroleum companies were also laying out the infrastructure of political protest. The points of vulnerability, where movements could organize and apply pressure, now included a series of oil wells, pipelines, refineries, railways, docks and shipping lanes across the Middle East. These were the interconnected sites at which a series of claims for political freedoms and more egalitarian forms of life would be fought.’⁶⁶⁰ Here, Mitchel was suggesting that organized action on a specific ‘vulnerable’ point in a spatial arrangement would bring certain pressures to the everyday operations of the world capitalist machinery. However, he should have added that this ‘infrastructure of political protest’ was conceivable because of the existence of a corresponding legal infrastructure that was a part of the spatial configuration in question, and so applying pressure on these sites had an effect on the law as well. The K3 workers were simultaneously rejecting their role in the operations of an exploitative system of capital accumulation, while asserting and even constructing their own imaginative legal order. This explains why one worker considered that the ‘dictatorship of the proletariat’⁶⁶¹ was established at K3 that day, while workers would refer to the station as ‘the State of Shanwār Oūda’.⁶⁶²

⁶⁶⁰ Mitchel, *supra*, ft. 451, at 103.

⁶⁶¹ His statement was: ‘[I]n a word, the dictatorship of the proletariat was established at K3 on the 23rd of April, if the comparison is apt’. Batatu, *supra*, ft. 41, at 625

⁶⁶² Ara’ Khājādwir. “Ma’an al-‘Umālīya Tuhāwir Ara’ Khājādwir” [Ma’an converses with Ara’ Khājādwir], *al-Hīwār al-Mutamadin*, 6/8/2008, <http://www.ahewar.org>.

The strike and the beehive-like organizing capacity of the K3 oil workers in controlling the station is a remarkable illustration of how precise organized action that takes into account space and spatial configuration affects and eventually transforms law and governance. More so, the workers' very determination to assert their rights after being forced out of their station was itself replete with meaning. For unlike the oil pipelines that they operated under the desert sun that pumped a lifeless commodity into the machinery of the capitalist world economy, the workers were determined to materially impress that their natural rights and living demands through their very actions would traverse the space of the vast desert all the way to the seat of state power in Baghdad, and explode into a revolutionary mode to shake up the despotic order that oppressed them. This of course did not happen. Not yet. Their unwavering movement was tragically blocked. Although the strike failed in that none of the workers' demands were fulfilled, this legendary effort in worker organization and agency would reemerge in a radical way after the revolution in 1958.

VIII. Conclusion

This chapter has detailed the socio-economic conditions of the oil workers of Kirkuk, examining the micro-history of the IPC oil fields. The main point is to show that the legal arrangements described in Chapter 3, had a material effect on the ground by ensuing capitalist operations were established in Kirkuk. The concessionary agreement and semi-peripheral sovereignty produced a unique space where the company had a wide discretion to operate, in turn, creating a certain colonial capitalism. The chapter then moves to uncover the triangular relationship between the company, the British Embassy and the Iraqi government in violently crushing the Gawūrbāghī oil strike of 1946, which was initiated by the oil workers to resist the imperialist constraints imposed on their lives. This strike demonstrates how the imperial and capitalist spaces that emerged from international and transnational law insulated Iraqi law and so prevented the Iraqi people from pursuing justice against the company for the murder of Iraqi workers. The chapter consequently critiques the company narrative of the strike and its responses to it. Finally, the famous K3 pumping station strike is detailed to illustrate how spatiality was used as a strategy by the oil workers in their anti-imperial struggle and to assert their own proletarian legal order.

Chapter 5: The Railway & Port Workers' Struggle Against the Semi-Colonial Legality of the Iraqi State

The Port soars when it hears the call
Yielding an echoed response
And the heroes of the trade union how they
Taste humiliation and suffering
Guilty when it is said to us that the bearers of
Rights want what was snatched [from them]?
And just for every freeman to endure [at]
The hand of the colonizers in pain and vex
...

So cry to your 'ally' on our behalf:
We do not want neither a treaty nor a mandate.⁶⁶³

~ Badr Shākir al-Sayyāb

I. Introduction

The other advanced sectors of the Iraqi working class at the time were the railway and port workers. The previous chapter dealt with the micro-history of the oil workers and showed how they struggled against the 'triangular' complicity between the IPC, the Iraqi state and the British Embassy. This chapter will expand this analysis, moving from the provincial city of Kirkuk and its surroundings into two other sites of labour struggle at the time: the Iraq State Railways, concentrated in the workshops of western Baghdad, and the Port of Basra in the South. Both the railways and the port were arranged as *semi-autonomous* entities —administratively and functionally separated from the Iraqi state. This was the direct effect of the 1930 Anglo-Iraqi Treaty and Iraqi semi-peripheral sovereignty. After detailing these legal structures, I will turn to

⁶⁶³ The entire poem quoted in Jasim al-Matīr, "Bayna 'am 47 wa Thukrā 74 Af'āl Kathīra Tuthīr al-Da ḥsha," [Between the year '48 and the memory of '74 a lot of actions that astonish], *Basrah al-Ahālī*, 25/3/2008. Al-Sayyāb, who was a port worker at the time, recited this poem on the day of the 1948 port strike, the strikers carried him on their shoulders. The poem illustrates how the strikers tied their conditions to the Anglo-Iraq treaty. My translation.

explore the conditions of the railway and port workers and then analyze their various organizational efforts to improve their conditions, while simultaneously challenging the repressive semi-colonial legal structures that were imposed on them through collective strike action. I will end with an analysis of the manner in which British experts –especially the labour attaché to the British Embassy and the labour advisor to the Ministry of Social Affairs and Labour – influenced the institutions of the Iraqi state. I will show how the British expert’s approach conceived of trade unionism and the working class in Iraq. The argument in this chapter is that while the railway and port workers were structurally challenging the semi-colonial legal order, British experts were devising top-down social and labour reforms to ensure the maintenance of this order and British hegemony. I will then critically examine the limitations of their analyses in their reports to explain their failure in preventing revolution in the end.

II. The Iraq State Railways as imperial arteries of communications

The Iraq railways were envisioned for a specific purpose that has always been at the center of imperial considerations. This goes back to the tense conflicts that emerged between imperial powers over the strategic ‘Berlin-Baghdad Railway’ that was initially obtained as a concession by the German-controlled Anatolian Railway in 1902.⁶⁶⁴ By the time the First World War began in 1914, and the British occupied Iraq a few years later, only a 74-mile section of standard-gauge railway between Baghdad and Samārra was under construction.⁶⁶⁵ It was consequently only as a result of the war that the British Army was to extensively build the railway system in Iraq.⁶⁶⁶ As the Director-General of the Iraqi State Railways wrote in one of his reports in 1947, ‘the railway [system] is virtually a product of two wars’.⁶⁶⁷ The British, who always regarded the railways as essential to their strategic communication network in the

⁶⁶⁴ The literature on the Baghdad-Berlin Railway is vast. For a more recent study see, Murat Ozyuksel. *Berlin-Baghdad Railway and the Ottoman Empire: Industrialization, Imperial Germany and the Middle East*, (I.B. Taurus, 2016).

⁶⁶⁵ Naval Intelligence Division. *Iraq and the Persian Gulf* (B.R. 524, Geographical Handbook Series, September 1944), at 579.

⁶⁶⁶ *Ibid*, at 580-581. , During the war effort the following lines were constructed: the Basra-Nasiriya line; the Basra-Qurna-Amara line; the Shaikh-Saad-Sinn-Atab line; the Kut-Baghdad line; the Baghdad-Baquba-Mansur line; the Baghdad-Fallujah line; Baghdad Hilla line; and Sammara-Baiji line. Most of these lines would be dismantled after the war, while a single line between Basra and Baghdad would be deemed sufficient for post-war purposes.

⁶⁶⁷ Iraqi State Railways. *Report on the Administration of the Railways*, 1945-46, (Baghdad: September 1st, 1947).

region,⁶⁶⁸ ensured the safeguarding of their interests in what Longrigg and Stoakes considered the ‘arteries of Iraq’s communication’⁶⁶⁹ after independence. Hence, it is for this reason that the railways were to be explicitly addressed in the 1930 Anglo-Iraq Treaty, fundamentally influencing the institutions of an ‘independent’ Iraqi state.

The main lines of the railway system, were divided into two sections, standard gauge north of Baghdad to Baijī along the Tigris, and meter gauge from Baghdad to Basra, along the Euphrates, and from Baghdad to Jalūla on the Diyāla, where it branched eastwards to Khanaqīn, and northward to Kirkūk.⁶⁷⁰ In 1939, the Baghdad-Baiji was extended through Mosul to Tell Kocheq on the Syrian frontier, and after 1945 the Kirkūk was extended to Arbīl.⁶⁷¹ For the purposes of this chapter, the most important part of the entire railway system lay in the workshops and stores of Schālchīyyāh in Baghdad (a working-class district situated 2.5 miles north-west of Baghdad West station). The headquarters of the Railways were located in the west side of the Tigris in Baghdad.⁶⁷²

During the first war, between 1914-1918, those employed by the Railway Directorate were entirely British and Indian. By 1940, the total staff numbered 8,863 (32 of whom were British, 31 Indian, and the rest were Iraqis).⁶⁷³ After the second war, in 1946, according to a railway administrative report, the total staff numbered 14,522 (14,461 of whom were Iraqis). The majority of Iraqis were employed as labourers (11,211), while the others were for the most part, low-grade or junior officials. Only 43 Iraqis were in some sort of middle and ‘senior positions,’ compared to 59 British officials served in senior or higher technical and ‘expert’ positions.⁶⁷⁴ This composition of employees at the Railways was a reflection of the fact that the institution was juridically separated from the Iraqi state and administered in such a manner. These legal structures were embedded in the 1930 Anglo-Iraq Treaty and finalized later in a separate 1936 Railway Agreement that I will discuss in detail below. This therefore rendered the Railway

⁶⁶⁸ See Morton Brown Stratton. *British Communications in the Middle East 1885-1939*, (PhD Dissertation, University of Pennsylvania, 1943).

⁶⁶⁹ Stephen Longrigg and Frank Stoakes. *Iraq* (Ernest Benn, London, 1958), at 133.

⁶⁷⁰ Naval Intelligence Division, *supra*, ft. 661, at 581; Longrigg and Stoakes, *ibid*, at 133.

⁶⁷¹ *Ibid*, at 133. For a detailed description of the railway lines see, Hugh Hughes. *Middle East Railways* (Kenton: The Continental Railway Circle, 1981), at 89-90.

⁶⁷² Naval Intelligence Division, *supra*, ft. 665, at 585.

⁶⁷³ *Ibid*.

⁶⁷⁴ Iraqi State Railways. *Report on the Administration of the Railways, 1945-46*, (September 1st, 1947), at 36.

Directorate as having a special status under law, for although its ownership was transferred to the Iraqi state (in 1936); it was in reality administered under the authority of a British Director-General, who had semi-autonomous powers under statutory law. It was in that sense that most Iraqis considered the Railway Directorate as ‘an alien [semi-colonial] body’.⁶⁷⁵

III. The legal structures that govern the institutions of the Railway Directorate

As discussed in Chapter 3, the 1930 Anglo-Iraq Treaty of Alliance would govern the relations between the newly ‘independent’ Iraqi state and Britain. I have already argued that this treaty in fact ensured that Iraqi sovereignty would be constricted as it gave Britain significant room to influence the vital functions of the Iraqi state. Furthermore, this treaty gave way for the development of a novel form of sovereignty – semi-peripheral sovereignty – under international law, as the jurists of the PMC in Geneva considered it quite adequate for the termination of the Mandate. In an annex of the treaty, it was stipulated that a ‘close’ alliance between the two states would be maintained, especially relating to the military, as two bases were to be maintained rent-free inside Iraq, while British troops had a (virtually unlimited) right to move troops over Iraqi soil. Article 7 of the annexure stated that Iraq would, ‘...afford, when requested to do so by His Britannic Majesty (HBM), all possible facilities for the movement of British forces of HBM of all arms in transit across ‘Iraq and for the transport and storage of all supplies and equipment that may be required by these forces during their passage across Iraq. These facilities shall cover the use of roads, railways, waterways, ports and aerodromes of Iraq and HBM’s ships shall have general permission to visit the Shatt-al-Arab.’⁶⁷⁶

A separate financial annexure, which was likewise attached to the treaty, dealt with the railways. It was stipulated that the ownership of the railway system would be transferred by British government to the Iraq government and registered under its name, while full beneficial ownership shall be vested by lease at a nominal rent in a special body or corporation having a separate legal personality to be constituted by special Statute of the Iraq Legislature.⁶⁷⁷ This

⁶⁷⁵ Batatu, *The Old Social Classes*, *supra*, ft. 41, at 617.

⁶⁷⁶ *The Anglo-Iraq Treaty of 1930*, (Baghdad, June 30, 1930), Art. 7 of the Annexure to the Treaty of Alliance.

⁶⁷⁷ *Ibid*, *Notes Exchanged with the Iraq Prime Minister Embodying the Separate Agreement on Financial Questions Referred to in the second Exchange of Notes Appended to the Anglo-Iraq Treaty of 30th June, 1930*; Art. 4(a).

corporation would be wholly responsible for the administration and management of the railway system, subject to limitations imposed by the statute.⁶⁷⁸ The Board of the corporation would consist of five members, two of whom would be appointed by the government of Britain and two by the government of Iraq; the fifth who would be the Chairman would be appointed by both governments in agreement.⁶⁷⁹

It took a longer time than anticipated to subsequently negotiate and finalize an agreement by which the railway was to be transferred to the Iraqi state. The disagreements were mostly regarding the actual amount to be paid for purchase, and the composition of the Board mentioned in the treaty, and its statutory powers. E.G. Hogg, the British Advisor to the Ministry of Finance, explained the difficulties in negotiations in a Note where he wrote, ‘in the case of the Railways...[the] Iraqi [government] feel that operations are conducted inside a wall which they cannot see through and can only to a very limited extent look over. They are told that the existence of the Board will make all the difference, since they will have their representation on the Board, which will be composed of reasonable men...[who] will listen to their views. On this they are skeptical...’ considering that they would become ‘a permanent minority’ on the Board.⁶⁸⁰

Eventually, the Railway Agreement was concluded in March 1936. A law was passed to create a corporation that would govern the railways.⁶⁸¹ It was agreed that the Iraqi state would take over ownership of the railways (including its material assets and Reserve fund) for a nominal sum of 494,000 British Pounds Sterling.⁶⁸² The Iraqi Government was to accept all liabilities relating to the railways. Furthermore, it was agreed that for twenty years from the date of the transfer, the management of the railways would be entrusted to a five-member Board of Management appointed by the Iraqi Government, only one of whom would be a British subject. However, the agreement made it clear that British subjects would hold all key positions of administration, such as General Manager, Inspector-General of Traffic and Chief Engineer. In that sense, the Railway Agreement and the Anglo-Iraq Treaty ensured that the railway system was to remain under British administrative control, although it was legally owned by the Iraqi

⁶⁷⁸ *Ibid*, Art. 4(b).

⁶⁷⁹ *Ibid*, Art. 4(d).

⁶⁸⁰ TNA. CO 730/172/4. Note by Mr. E.G. Hogg, C.M.G., Advisor to the Ministry of Finance, (Baghdad, 7th August, 1932).

⁶⁸¹ *Ibid*, ‘Railway Corporation Law’ (1932).

⁶⁸² The text of the Railway Agreement is in TNA, Sir Archibald Clark Kerr to FO, 1 April, 1936, FO 371/19998, E2117/25/93.

state. This was one of the legal instruments that were innovatively used to dismember the strategic parts of the country, turning them into *semi-colonial enclaves*, with the purpose of safeguarding British interests. As I will show later, a similar approach was used when dealing with the Port of Basra. It was no wonder that these spaces would eventually become important sites of anti-colonial and anti-imperial struggle.

IV. The first communist ‘experiment’ in strike action at Schālchīyyāh & its significance

I have earlier recounted the role of the railway workers in the formative years of the history of the labour movement in the early and mid-1930s in a previous chapter. So, it should be kept in mind that the railway workers had a considerably longer history in labour organizing and it is for this reason not surprising that the communists would decide to begin their involvement with labour in the railways, leading to the 15-day Schālchīyyāh strike that would have a significant contribution to the overall history of labour movement in Iraq. The communists’ strategic approach was to gradually organize cells in different railway stations throughout the country (such as Ma’qīl, Sāmāwah, Diwanīyyah, Baghdad West, Baghdad North, Baghdad East, and Kirkūk).⁶⁸³ However, they focused their energies on the Schālchīyyāh workshops, as they considered it as the ‘most fundamental point in the entire system’, where they would be able to affect the most damage if strike action was called.⁶⁸⁴ The workers of the Schālchīyyāh workshops numbered 1,265 in May 1945 (compromising about 12 percent of all railway workers).⁶⁸⁵

⁶⁸³ Batatu, *supra*, ft. 41, at 617.

⁶⁸⁴ *Ibid.*

⁶⁸⁵ *Ibid.*

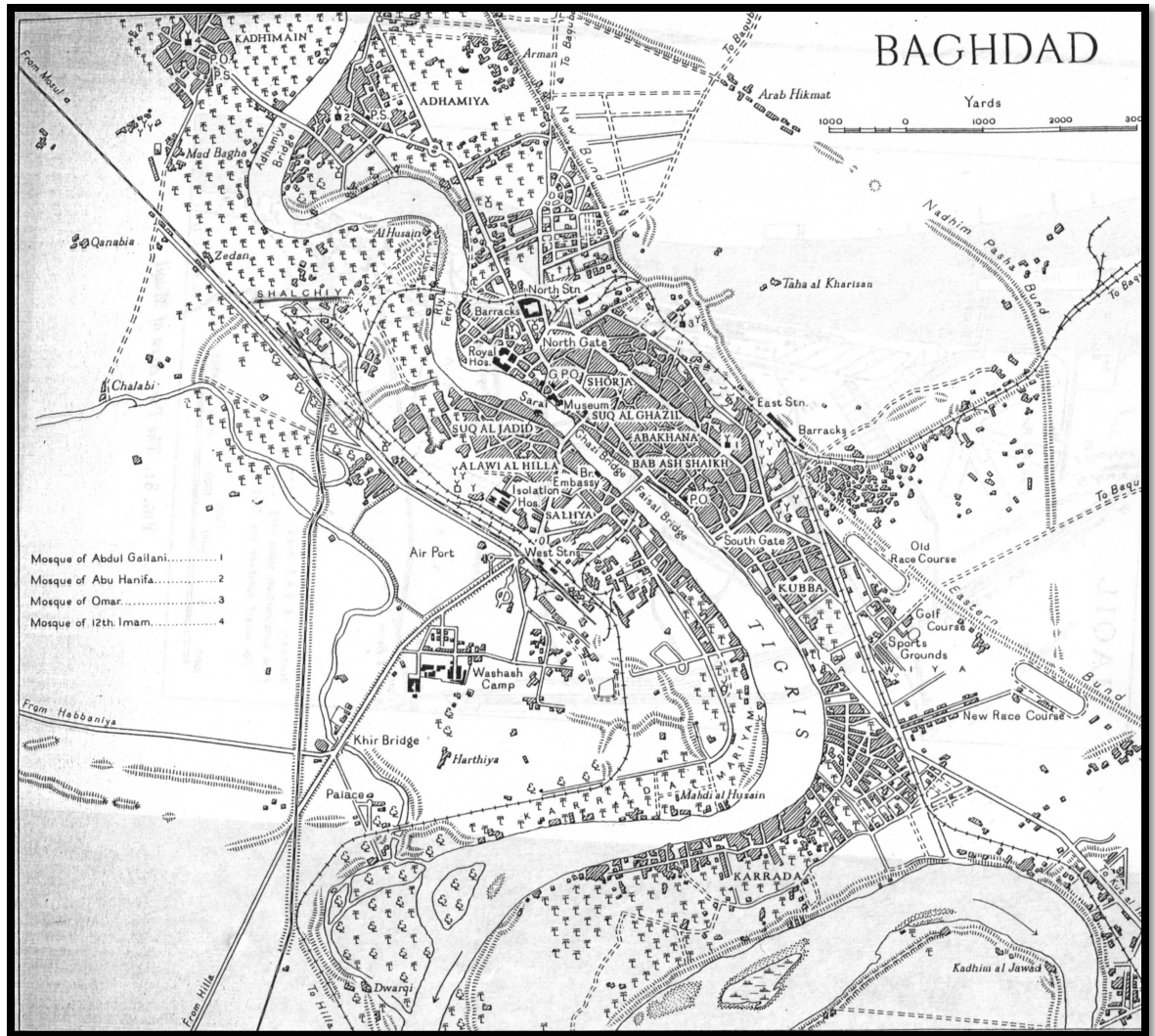


Figure 3: Map of Baghdad showing the railway workshops in the Schalchiyyah neighborhood. (Naval Intelligence Division, Handbook, *supra*, ft. 665, at 511).

Most of the railway workers (like their counterparts in the huge industrial enterprises) were uneducated, had rural origins, and remained attached to their tribal roots.⁶⁸⁶ It was therefore a difficult task for the urban communist intelligentsia to shake their consciousness as their peasant-outlook and tribal affiliations made them less susceptible to notions of class solidarity, and appeared to fragment their ability to unite under class or even nationalist lines.⁶⁸⁷ Yet, despite these misgivings, the railway workers were successful in finding a form of unity at pivotal moments, under notions of class solidarity. The communists were sensitive to recruit the workers' most respected leaders into their ranks (in particular Alī Shukur and 'Abd-Tamr) and this

⁶⁸⁶ al-Nū' mān, *supra*, ft. 576, at 122.

⁶⁸⁷ *Ibid.*

eventually made the party quite attractive. In time, the communists succeeded in becoming an intrinsic part of the railway workers, providing the workers with the analytic language and conceptual tools they needed to understand the world around them.⁶⁸⁸

The Railway Union received its license from the Ministry of Social Affairs in September 1944.⁶⁸⁹ Its first congress was held in Baghdad on November 7, 1944.⁶⁹⁰ Hāshim Jawād, the well-respected Iraqi member of the ILO chaired the elections, which gave it a certain legitimacy.⁶⁹¹ Sixty-four delegates representing 1,692 members of all railway workers were in attendance.⁶⁹² The assembly elected a supervisory council of twelve (ten of which were members of the ICP), and an administrative bureau of seven members (four of which were members of the ICP). Alī Shukur, a charismatic and well-respected communist-worker⁶⁹³, was elected as the president of the union, and Abbūd Hamza as secretary.⁶⁹⁴ The union charter emphasized that it would seek improvements in wages and working conditions strictly by ‘legal’ means, discouraging any confrontation with the state.⁶⁹⁵ It called for workers’ education (to teach them how to read and write), the raising of their technical skills, ‘to cultivate brotherly ties amongst themselves in the interest of the working class, their Iraqi homeland, and ‘international democracy’’.⁶⁹⁶ Within a month of its establishment a third of the railways workers (around 11,000 workers) joined the union.⁶⁹⁷ In fact, the licensing of this union was such an important event that its headquarters was transformed into the epicenter of far-reaching labour organizing and solidarity across sectorial lines, bolstering the labour movement as a whole.⁶⁹⁸

At the congress, the new president of the union, Ali Shukur made a speech in which he emphasized that the union’s main role was to advocate for the legal rights of the railway workers

⁶⁸⁸ Batatu, *supra*, ft. 41, at 620.

⁶⁸⁹ TNA. Thompson (Bagdad) to FO (London). 15 Sep. 1944 ‘Formation of Trade Association in Iraq’ E6090/5305/43. FO 371/40096.

⁶⁹⁰ TNA. Thompson (Bagdad) to FO (London). 18 Aug. 1944 ‘Formation of trade associations in Iraq’ E6090/5305/5305/93. FO 371/40096. It happened to be the 27th anniversary of the Bolshevik Revolution.

⁶⁹¹ TNA. Mr. Thompson to Mr. Bevin, Oct 8, 1945. E7496/6265/65. FO 371/45281.

⁶⁹² Batatu, *supra*, ft. 41, at 618.

⁶⁹³ Salim Obeid al-Nū‘mān, a communist lawyer, who frequently defended workers arrested for their trade union activities in court, knew Shukur well and described him as ‘charismatic’, ‘brave, and ‘an example of well-mannered and kind personality’. al-Nū‘mān, *supra*, ft. 52, at 298, .

⁶⁹⁴ TNA. Mr. Thompson to Mr. Bevin, Oct 8, 1945. E7496/6265/65. FO 371/45281.

⁶⁹⁵ Batatu, *supra*, ft. 41, at 618.

⁶⁹⁶ *Constitution of the Iraqi Railway Workers’ Union* (Baghdad, 1944), Articles 2-7, *Ibid.*

⁶⁹⁷ *Ibid.*

⁶⁹⁸ Sbāhī, *supra*, ft. 191, at 255.

and to resolve all their problems.⁶⁹⁹ He then turned to identify some of the main problems facing the workers, mentioning their drastically low wages which were inadequate to live on. He recommended that wages should be fixed on a yearly rather than daily basis.⁷⁰⁰ He also addressed the question of hours of work, stating that workers worked overtime to the detriment of their health.⁷⁰¹ One of the main issues that he tackled related to dismissals-at-will and the manner in which management abused their powers, often fining workers in a punitive manner.⁷⁰² Shukur insisted that this needed to be regulated and clearly defined within the law so that it was not abused. Finally, although he agreed that open communication channels and full cooperation between management and the union was a necessity – even suggesting the formation of a special committee to look into workers grievances and educating them on their rights under the labour law – he made it clear that an independent trade union *must* be recognized by management as the sole bargaining agent for the railway workers.⁷⁰³

From the very beginning, the attitude of the British Director-General of the Railways, Major Smith, was hostile towards the formation and licensing of the union. Rather than recognizing its elections as a democratic process, he saw it as being instigated by communist agitators who were ‘political opportunists’ rather than genuine railway workers.⁷⁰⁴ Smith would keep a close eye on these developments, privately encouraging workers to ‘squeeze out’ those undesirable (elected) leaders from their ranks.⁷⁰⁵ Even the British Embassy councilor, who agreed that the new union was for the most part promoted by ‘political busybodies’, would go on to criticize Smith’s uncompromising approach, writing in a dispatch to London: “‘political opportunists’” or not, leaders with some education and independence will be necessary if workers in this country are to improve upon their miserable status. They are unlikely in my view to make

⁶⁹⁹ *Ṣawt al-Ahālī*, 10 November 1944.

⁷⁰⁰ *Ibid.*

⁷⁰¹ These accusations have been documented elsewhere, especially in the working-class press. Here is an example from the communist paper, *al-Qa’ida* (December, 1943): “The head of the workshop, Mr. Holt...always forces the workers...to work overtime, night and day...until the hours turned into a total of fourteen hours a day...[this] made the health of the workers worst...day after day...If a worker needed to go to the hospital, he only had ten minutes to do so, otherwise he would lose half of his wage...” See Nasir Saïd al-Khadhami [Sbāhī], *Musahama fī Kitābat Tarīkh al-Haraka al-‘Amaliya fī al-‘Iraq*, Markaz Dīrāsāt al-Ishtrakīya fī ‘Ālim al-‘Arabī, Dīmashq, 1989), at 150.

⁷⁰² *Ṣawt al-Ahālī*, 10 November 1944.

⁷⁰³ *Ibid.*

⁷⁰⁴TNA. Mr. Thompson to Mr. Bevin, Oct 8, 1945. E7496/6265/65. FO 371/45281.

⁷⁰⁵ *Ibid.*

such progress if merely organized into “company unions” which is evidently what Smith would like to see’.⁷⁰⁶

As one would expect from a semi-colonial enterprise, the British Embassy believed that the numerous allegations regarding the working conditions of the railway workers made in the circulating communist pamphlets were exaggerated, at one point it was claimed that that conditions of railway workers were much higher than other industries. Moreover, the contravention of the Iraqi labour law by the railway administration, which was one of the main allegations made by the workers, was astoundingly admitted, but it was claimed that this contravention was done ‘to the advantage of the workers’.⁷⁰⁷

On April 11, the railway union submitted a petition to the railway administration which listed the demands of the Schālchīyyāh workers, which were raises of 50%, 40% and 30% on day wages of less than 200 fils,⁷⁰⁸ between 200-300 fils, and of more than 300 fils, respectively.⁷⁰⁹ The question of higher wages was the most important concern for the workers, because if one were to calculate the wages of the workers at the time and compare it to the cost of living index, it would be obvious that they were utterly inadequate. The lowest wage for day labourers at the railways was 150 fils⁷¹⁰, while the ‘labourer’s basket’ for one family to live on in December 1945 was calculated at approximately 405 fils.⁷¹¹ In other words, wages were less than inadequate to live on, especially considering the continuing rise of the cost of living. In fact, even by 1948 when some increases in wages were applied, while living costs rose to six times before the war, the labour attaché to the British Embassy wrote in his report that ‘the purchasing value of these

⁷⁰⁶ *Ibid.*

⁷⁰⁷ TNA. Note by P. Rex Marriot, ‘Enclosure: Iraq Communist Party’, Sep. 25, 1945. E7496/6265/65. FO 371/45281.

⁷⁰⁸ The Iraqi dinar was on par with the British pound and so 1 fils was equivalent to 50 shillings (the British currency in the Empire at the time).

⁷⁰⁹ The petition and demands are included in Ja’far ‘Abbās Ḥumaidī. *Al-Taṭwurāt al-Syāsīya fī al-‘Iraq, 1941-1953* [‘the political developments in Iraq, 1941-1953’] (al-Najaf: Matb’a al-Ni‘man, 1976), at 153.

⁷¹⁰ TNA. Iraqi State Railways, Establishment General Order No. 76: Schedule of Wages for Daily Paid Railway Workmen, 1st May, 1945; in ‘Labour Conditions in Iraq’ Stonehewer British Embassy, Bagdad to FO, Oct 29, 1946, E10974/3860/93. FO 371/52456.

⁷¹¹ TNA. ‘Labourer’s Basket: Man, Wife and 2 Children as revised by Central Labour Sub-Committee. Minutes of Meeting of Dec 22, 1942, Part 1 (b)’; in ‘Labour Conditions in Iraq’ Stonehewer British Embassy, Bagdad to FO, Oct 29, 1946, E10974/3860/93. FO 371/52456.

wages was much below the lowest subsistence level,' and that therefore a wage of about 230 fils a day meant that workers were 'nearly half-starved'.⁷¹²

The conditions of the railway workers could also be ascertained from the descriptions of their living quarters, which were tiny mud huts surrounding the workshops. A communist lawyer, Sālim al-Nū'mān described one of these huts, where the administrative bureau of the union would sometimes meet, in the following manner: 'the hut...was made up of one room [and] built from mud... its space was no more than thirty square feet; [and] a family of five lived in it...[T]hese were the conditions of the railway workers'.⁷¹³ Even when the labour attaché, was given a tour of these quarters in 1948, he described them as 'nauseating'.⁷¹⁴ Azīz al-Hājī, one of the foremost communist intellectuals who was assigned the task of coordinating union activities with the party, described how a railway worker portrayed his conditions in a union meeting as he was weeping: Describing 'the unaffordable rents, dismissals-at-will, high costs and black housing, the police chase, the abuse of the British administration ... [It is clear the worker concluded that] the [British railway] administrator Smith and his kind were the ones running these [Iraqi] governments'.⁷¹⁵

The Railway Directorate's response to the union's demands was an unqualified refusal, and Shukur consequently had no choice but to order a national strike four days later.⁷¹⁶ The response was instantaneous. The Schālchīyyāh workshops came to a complete standstill for ten consecutive days. This naturally put a great strain on the entire railway system, as strike action spread to other stations in Basra and Mosul.⁷¹⁷ On the third day, Major General H.C. Smith cut off water supplies to the workers' mud hut dwellings surrounding the railway workshops.⁷¹⁸

⁷¹²TNA. FO 371/68482. 'Report on visit to Iraq from 8th June to 10th July by M.T. Audsley' (1 November, 1948).

⁷¹³al-Nū'mān, *supra*, ft. 580, at 299.

⁷¹⁴TNA. FO 371/68482. 'Report on visit to Iraq from 8th June to 10th July by M.T. Audsley', *supra*.

⁷¹⁵al-Hājī, Azīz. *Dāfatir al-Shakhis al-Ākhir*, [Notebooks of the Other Person] (Beirut: Mu'sasa al-'Arabīya lil-dirāsāt wa al-Nashir, 1985), at 104.

⁷¹⁶al-Nū'mān recounts how Shukur as the president of the administrative bureau of the union approached Comrade Fahad the secretary-general of the ICP to try to convince him of the necessity to call a strike shortly after the congress ended. Fahad cautioned against this as he felt that it was not the correct move in terms of strategy and tactics. He argued that waiting for the right moment was decisive for a successful strike, eluding to the fact one must take into account the wider political implications and its effects on the nationalist movement as a whole. al-Nū'mān, *supra*, ft. 580, at 123-124.

⁷¹⁷Humaīdī, *supra*, ft. 549, at 154-55.

⁷¹⁸Batatu, *supra*, ft. 41, at 619.

On the 17th, the *mutasarif* of Baghdad ordered the suppression of the union, arresting the members of the administrative bureau. The justification for the revocation of the union's license and its suppression could be found in a letter sent to Parliament from the Minister of Social Affairs, which claimed that Iraqi workers were 'socially and intellectually immature' to form a union, as they were easily prone to manipulation by political agitators, in turn, threatening the 'peace of the Monarchy.'⁷¹⁹ The Minister urged that the union's license be revoked, and Parliament agreed. During the strike, the Railway Administration formed a spineless 'Labour Committee' that called for an end of the strike before any demands were met. The workers aware of this strategy boycotted it, and mockingly referred to it as 'Smith's Committee.'⁷²⁰ General Smith, consequently warned the strikers to resume work by the morning of the 21st, or be considered, 'as having left the service of the railway without notice.'⁷²¹ The workers remained firm for the most part. At this point, Smith appealed to the workers: 'Your interests are our interests. Therefore, return to work and have confidence that your Administration...will improve your condition as far as is possible.'⁷²² There was no response. On the 24th, Smith threatened to import Indian labour. Five days later, the strike subsided after a promise by the Ministry of Social Affairs to increase wages to a certain extent.⁷²³ After the 28th, worker disintegration spread for fear for their jobs, and the strike eventually ended.⁷²⁴ The railway union was permanently shut down and would not reemerge until after the fall of the Monarchy.

The significance of the 1945 railway strike in the history of the labour movement could not be overstated as it was in the words of Sbāhī the first 'experiment' in organizational strike action in post-war Iraq.⁷²⁵ It was in other words, the beginning of a pattern that would reoccur elsewhere, where a union would be democratically formed by the workers, then violently suppressed by the government, leading to the emergence of a (hidden) 'strike committee' that would undertake a more offensive militant strategy of wildcat strike action. This pattern continued sporadically until the advent of the revolution.

⁷¹⁹ As quoted in Humaidī, ft. 549, *supra*, at 155.

⁷²⁰ Sbāhī, *supra*, ft. 187, at 258-259.

⁷²¹ Batatu, *supra*, ft. 41, at 620.

⁷²² *Ibid.*

⁷²³ *Ibid.* A committee was formed by the Ministry of Social Affairs to deal with the question of wages, and it was decided that raises of 30, 25 and 20 percent would be implemented. In the front page of *Ṣawt al-Ahālī*, the editors called for the reopening of the union and the release of the administrative bureau, arguing that the fact that wages were to be raised implies that the workers were correct and effective in striking to fulfill their demands. *Ṣawt al-Ahālī*, April 25, 1945.

⁷²⁴ Batatu, *supra*, ft. 41.

⁷²⁵ Sbāhī, *supra*, ft. 191, at 257.

As Batatu illustrates the railway strike demonstrated that the communists did not actually have unlimited influence or control of the workers. That is true, however Batatu did not fully or explicitly acknowledge the independence of the trade union and its administrative bureau from the ICP. In other words, his narrative assumes that the party was the prime mover of *every aspect* of the strike, including the union itself, which was not the case. The union was influenced by the communists and very closely coordinated with the party, and its president was a communist, but he took the workers' concerns to the party leadership rather than imposed party instructions on them.⁷²⁶ The fact was that the leadership of the union was democratically elected for a reason and that was that they were *trusted to further the workers' interests* while keeping wider political questions in mind. Close coordination and guidance does not necessary mean full control (although it could surely at times imply strict discipline), and that was never really the policy of the party in the first place.

The communists were successful in broadening the workers' perspective and allowed them to practice all-embracing solidarity. In other words, they were able to see the larger picture. Hence, the strike actually brought workers from different industries together to defend the very idea of trade unionism, which was being attacked by the government and the railway administration. Numerous sympathy strikes were initiated by mechanic, carpenter, electrical, cigarette and printer workers.⁷²⁷ One petition submitted to the government made it clear that, 'this attack on the railway workers is considered as directed towards all the workers of Iraq'.⁷²⁸ The other consequence of the strike was the gradual radicalization of the working class as labour issues were now understood in the context of the nationalist movement and its political discourse. In other words, the role of the labour movement in the overall nationalist movement was further clarified, and workers were able to grasp how 'workers solidarity' came hand in hand with nationalist 'popular solidarity'.⁷²⁹ This allowed for the escalation in the popular 'hatred towards British colonialism [and imperialism]' within and beyond the Iraqi working class.⁷³⁰ So, for

⁷²⁶ al-Nū' māt writes on this issue that Shukur was loyal to the communist party, and was careful to follow party policy. However, he was aware of his role as the leader of a large union and as an ardent trade unionist many times made his own decisions *without* consulting the party. Fahad trusted him and did not interfere with any of these decisions, but only asked him to consult the party when the issue in question had broader political implications that went beyond trade unionism. *Supra*, ft. 52, at 298.

⁷²⁷ Ḥumaidī, *supra*, ft. 549, at 155

⁷²⁸ *Ibid*, at 156.

⁷²⁹ al-Nū' māt, *supra*, ft. 580, at 126.

⁷³⁰ *Ibid*.

example, the Iraqi Federation of Students organized sympathy strikes in support of the railway workers' struggle, referring to the Railway Directorate in their petition to the government as a 'colonial entity'.⁷³¹ The significance of the formation of this bond between the students and the workers would be one of the most important and effective relationships during the *Wathba*.

More significantly for our purposes, the communists exposed the manner in which Iraqi law was being undermined by the semi-colonial legal structures that governed the railways. The response of the British railway administration of violent suppression of the union and its replacement by what workers would later refer to as the 'colonial Smith Committees' demonstrated how the Anglo-Iraq treaty and its legal structures had a direct effect on the workers. The ICP were central in contributing to the broadening the worker's consciousness in this regard, allowing them to learn from their experiences. This is clear in a communist declaration written by Fahad and addressed to the railway workers in February of 1946 that called for the re-initiation of strike action, and directly critiqued the neo-colonial legal structures of the railway administration and its restrictive influence on Iraqi law:

... Comrades! ... We understand why you want your trade unions [rather than the 'workers committees']...you want them because they represent you and because you struggle under their banner to implement the labour laws, and to improve your living...conditions, and to respond to the assault and injustices that you are exposed to by the Colonial Smith Administration. And we understand why Smith and the Iraqi government want to strip you and strip [all] the workers of Iraq from the trade unions and replace them with 'worker committee[s];' because they want the labour law to remain – like the Iraqi constitution – a dead law, and because they want to exploit the Iraqi worker like an animal without any rights to raise his voice or respond against any injustice perpetrated against him...⁷³²

The struggle therefore moved from one generally concerning a wage increase to one dealing specifically with the *very existence of trade unionism* in Iraq, the *recognition* of an independent railway trade union and (quite explicitly) the *implementation of the labour law*. The workers were aware that through their actions, they were injecting real content into the empty shells of the labour legislation that was in the books, and this had an important effect on their nationalist resistance against the legal structures governing the Iraqi state.

In that sense, the 1945 strike would in fact later continue under a new form of offensive action with the 1946 strike (and later in massive successive 1948 strikes during the *Wathba*),

⁷³¹ *Ibid*, at 125.

⁷³² *Declaration of the Iraqi Communist Party to the Railway Workers*, Feb 28 1946 reproduced in full in *al-Thaqāfa al-Jadīda*, issue 132, 1981, at 77.

which was now not only more political, but brought to further prominence the organizational institution of the 'higher strike committee'. Therefore, as the democratically elected trade unions were systematically suppressed by the Iraqi state and their British administrative overlords, the higher strike committee which tended to operate underground would emerge as an important organizational structure for the labour movement; whereas the tactic that would eventually distinguish this change in strategy (as was already detailed with the actions of the K3 oil workers) would become *offensive wildcat strike action*. This happened hand in hand with the development of a cadre of worker-communists, who would gain and hone unique organizational experiences in the strategies and tactics of strike action, and who would move to coordinate their efforts into other industries, in particular the oil fields and the Port of Basra.

V. 'To Basra's Haven'⁷³³: The struggle of the Port workers of Basra & their victory

One of the most important sites of labour struggle that would emerge on similar lines as the railways was the Port of Basra. The history of the city of Basra (at one point dubbed the 'Venice of the East' due to its narrow canals and waterways) could not be understood without its port⁷³⁴, which for centuries, as the only 'sea-gate' to the city and 'the Land of Two Rivers',⁷³⁵ was so central to the trade routes of the Indian Ocean and the Gulf, and later on would become vital to linking Iraq to the world economy.⁷³⁶ Naturally, most of Iraq's export and import trade passed through this port. Basra, situated on the right bank of the Shatt al-Arab, 70 miles by river above Fao, is in fact an agglomeration of three towns: Basra City; Ashar; the modern port of Maqil; and several large villages: Jubaila (on the river front); Manawi and Rubat Saghir.⁷³⁷ The British first entered the city in 1914 and occupied it thereafter, eventually turning it into 'an

⁷³³ From Milton's *Paradise Regained*

⁷³⁴ Mohammed Khudayyir illustrates this well in his book *Basrayatha*, which is an autobiographical portrait of Basra, when he writes, "Had it not been for the date palm, there would have been no baskets for harvesting dates. Had there been no baskets for harvesting dates, there would have been no date pickers. Had there been no date pickers, there would have been no ships. Had there been no ships, there would have been no port. Had there been no port, no city would have been built." One of the most important long established industries in the city was the date-packing industry. Mohammed Khudayyir, *Basrayatha: Portrait of a City*, William Hutchins (tr), (Cairo: AUC Press, 2007), at 5.

⁷³⁵ Cecil Byford. *The Port of Basrah Iraq*, (Published under the authority of the Port of Basrah Directorate, London: Waterlow & Sons, 1935).

⁷³⁶ See Hala Fatah. *The Politics of Regional Trade, supra*; Thabit Abdullah. *Merchants, Mamluks, and Murder: The Political Economy of Trade in Eighteenth-Century Basra*, (NY: SUNY Press, 2001).

⁷³⁷ Naval Intelligence Division, *supra*, ft. 665, at 505-506.

appanage of British India'.⁷³⁸ Of course, even before their military expedition, by the early twentieth century, trade in Basra was already 'almost entirely in British hands.'⁷³⁹

The British army gradually began constructing the modern port of Basra during the first war, using its access as the main supply base for their two military bases in Habbāniyyāh and Shū'aybāh. Once the military effort was over, the port reverted to its commercial function and officially opened in 1920 – its new commercial status affirmed in the Port of Basra Proclamation 1919 (Provisional) – considered as 'the Port of Basra Code'⁷⁴⁰- which would eventually be incorporated into the constitution or Organic Law in 1924.⁷⁴¹ The Basra Port Directorate remained under British ownership, although it was placed under the control of the new Iraq government and subsequently administered by the Ministry of Finance.⁷⁴²

By the time the Anglo-Iraq Treaty was signed in 1930, the port would be governed by very similar legal structures as the railways– that is, as a semi-autonomous institution. The financial annexure of the treaty set up an autonomous Port Trust, whereby the property of the port would be (legally) transferred to the Iraqi government.⁷⁴³ The Port Trust had its own 'legal personality,' and this legislation could not be amended without the agreement of the British, as long as Iraqi government owed debt with respect of the port.⁷⁴⁴ The Iraqi government would consequently confer 'full beneficial ownership' upon the Port Trust.⁷⁴⁵

The Iraqi government ultimately paid a nominal sum of 540,875 British pounds sterling.⁷⁴⁶ Hence, by the Second War, the port would become the property of the Iraqi government, although it was administered by an independent Port Authority, headed by a British

⁷³⁸ Paul Rich (ed.), *A Voyage in the Gulf: C.M. Cursetjee's The Land of the Date* (1918) (Cambridge: Allborough, 1991), at 157.

⁷³⁹ A.C. Wratislaw. *A Consul in the East* (London: William Blackwood and Sons, 1924), at 139.

⁷⁴⁰ Byford, *supra*, ft. 735, at 36

⁷⁴¹ *Ibid.*

⁷⁴² The Ministry of Finance was created in 1927 and directly attached to Parliament. It was separated from the executive under law. Its functions were to examine all accounts of the state, including the railways, the port and industrial factories, and it was empowered to take broad discretionary action to remedy any deficiencies. See Sassoon, *supra*, ft. 141, at 51.

⁷⁴³ *Anglo-Iraq Treaty, Annexure to the Treaty of Alliance*

⁷⁴⁴ *Ibid.*

⁷⁴⁵ *Ibid.*

⁷⁴⁶ Naval Intelligence Division, *supra*, ft. 665, at 508.

Port Director and a Director General of Navigation (including British senior administrative staff).⁷⁴⁷ Furthermore, the finances and budgets of the port, like the railways, were fully separated from that of the Iraq government.⁷⁴⁸ The port was therefore one of the strategic sites that was so important for British imperial interests that it had to be (practically) dismembered from the governing functions of the Iraqi state, turning it into a semi-colonial enclave governed by a separate semi-colonial legality. This was once more the effect of semi-peripheral sovereignty, which as discussed earlier, was characterized by a fragmented and constricted sovereignty at its core with merely the appearance of a legally conferred sovereignty.

The port workers were differentiated into numerous categories according to their functions in the port – they were not merely skilled, semiskilled and unskilled, but also marine ratings, monthly labourers, day labourers, labourers on contract and labourers on piecework.⁷⁴⁹ Furthermore, according to Batatu, the bulk of these workers came from rival tribes –Nassār and Bahrakān – which made them even more difficult to unify under class or nationalist lines.⁷⁵⁰ The communists and their allies therefore had a difficult road ahead in ‘loosening the workers from their old tribal moorings and fastening them to new proletarian anchors’.⁷⁵¹ The national campaign for a Port Workers’ Union began in 1944. As will be shown, one of the main characteristics that distinguished the struggle of the port workers was the uncompromising attempt to *unify all the fragmented port workers* and to guarantee that the Iraqi labour law was applied *systematically* to *all* port workers rather than only some.

In one revealing petition to the authorities during the campaign, which was published in the working-class press, the manner in which the Port Administration intentionally avoided the application of Iraqi law (namely the 1936 Labour Law) was described in colorful language, and the miserable conditions of the port workers compared to the ‘slave-workers of Pharaohs’. It is worth quoting in part below:

⁷⁴⁷ *Ibid.*

⁷⁴⁸ Cecil Byford, *supra*, ft. 735, at 24.

⁷⁴⁹ Batatu, *supra*, ft. 41, at 621.

⁷⁵⁰ *Ibid.*

⁷⁵¹ *Ibid.* Nāsir ‘Abbūd, a communist trade union leader described the difficulty of educating illiterate port workers. He would personally undertake one-on-one sessions with workers, reading and explaining the communist newspaper, *al-Qa’ida* in detail. “Nāsir ‘Abbūd. Munādil Fatha wa Shū’i Şāmid,” *Majala al-Ghadd*, Basra, 17 July 2011.

Our [port] workers have lived under the shadow of the British directorate that controls the Port, a life of misery and despair and slavery [...] representing the cruelest form of colonial exploitation, [...] a life that...does not fit with [the principles of] human rights of our age today... [The port administration] have taken away [...] our rights [...] Yes we have built the pyramids of the Pharaohs of the Port with our empty stomachs and our bodies half naked but we will not lose our conscience, as honorable workers and as citizens, we rose like other workers [before us] of our dear Iraqi nation to demand for *our legal right to establish a trade union, we seek to resurrect the labour law [of 1936] from under the layers of accumulated neglect throughout the years...* [we demand for the establishment of]...[a] trade union that seeks to raise our standard of living and improve our conditions of work. However, the foreign directorate of the Port has...attempted to intervene - to prevent us from acquiring our right to establish a trade union [...] The workers of the Port want to [...] enforce Iraqi laws [and] their rights. However, the masters of the Port see in the extension of the provisions of Iraqi laws into their independent directorate –which they consider as their own personal state- a danger that threatens their independent entity [...] and the loss of their control over this directorate...⁷⁵²

The petition made it clear that one cannot understand the conditions of the port workers without grasping the reality of the port as a semi-colonial enclave and the legal structures that govern it in the first place. In a way, the workers once again brought a dead Iraqi law in the books to life by using it in their petition and connecting it to what they consider as their violated rights. The use of the law in such a way could be considered as a strategic arsenal of resistance under their sleeves – the appropriation of legality and legal rhetoric to further their cause. In many ways, what they were asking for was not radical at all but rather quite moderate. However, for a semi-colonial administration and an authoritarian government, this was too much to ask for.

The Port Workers' Union ultimately received its license from the Ministry of Social Affairs despite several setbacks on 15 August 1945. The first congress was held on 12 October in a local coffeehouse, leading to the election of a Council of Thirteen Supervisors (which included seven communists), and an Administrative Bureau of eight led by the worker-communist, 'Abd al-Husān al-Jabbār, who was elected as president.⁷⁵³ Around 3,125 workers (60 percent of all port workers) subsequently joined the union by April 1946.⁷⁵⁴ According to a prominent labour organizer and port workers' leader, Nāsir 'Abbūd,⁷⁵⁵ despite gaining the legal license, the port administration rapidly waged its own repressive campaign against the union, with the goal of disrupting its activities at every move, especially with increasing its outright dismissals of any worker suspected of organizing for the union.⁷⁵⁶ A small strip of land in the port was chosen as

⁷⁵² Quoted in Zakī Khayrī and Su'ād Khayrī. *Dirāsāt fī Tarīkh al-Hizb al-Shiū'i al-'Iraqī*, [Studies in the history of the Iraqi Communist Party, Vol. 1], (Baghdad: al-Yūbil al-Thahabī, 1984), at 134.

⁷⁵³ Batatu, *supra*, ft. 41, at 621.

⁷⁵⁴ *Ibid.*

⁷⁵⁵ Nāsir 'Abbūd, "Liqa' M'a al-Rafīq Nasir 'Abbūd" [An interview with Comrade Nasir Abbud] in *al-Thaqāfa al-Jadīda* (Issue 152, 1984), at 51.

⁷⁵⁶ *Ibid.*, at 52.

the official headquarters of the union and a mounted structure erected, while workers were assigned to guard its entrances night and day, as meetings and heated debates were held, especially regarding the role of trade unionism and the importance of worker solidarity.⁷⁵⁷

The union decided to organize its first strike on 21 May 1947 – a higher strike committee was formed.⁷⁵⁸ The Union's list of demands included the recognition of the union by the port administration, the application of the labour law to all port workers regardless of their grade, the reinstatement of those dismissed for their trade union activism, and the raising of wages.⁷⁵⁹ This first experiment in strike action failed as police swiftly arrested the strike leaders and two-dozen workers.⁷⁶⁰

According to 'Abbūd, those arrested were ill-treated by police and then taken to appear in front of the courts, which took on a popular significance as their trials were 'transformed into a political demonstration against [police] terrorism and the defense of trade union rights and political freedoms' and especially 'the right to strike' which the workers consistently fought for to be enshrined into the 1936 Labour Law.⁷⁶¹ Several communist and left-leaning lawyers appeared in court in defense of those arrested, in particular the prominent communist lawyer, Mohammed Hussein Abū al-'Is, who with his distinctive oratorical voice denounced the violent tactics used against the working class.⁷⁶² Despite the fact that this first experiment in strike action by the port workers was a failure in that none of the workers' demands were fulfilled and at least sixty-five 'agitator-workers' were expelled from the port,⁷⁶³ 'Abbūd would consider it as an key moment whereby the workers gained experience discipline and solidarity, especially between the working class and the Iraqi masses as a whole.⁷⁶⁴

The determination of the port workers did not falter as they returned to plan new strategies and tactics in strike action in their next confrontation soon afterward during the *Wathba* uprising of 1948. I will return to the details of the *Wathba* in Chapter 7, but for now what is important to note is that a wave of labour strikes, one of which was the K3 oil strike detailed

⁷⁵⁷ *Ibid.*

⁷⁵⁸ *Ibid.*, at 53.

⁷⁵⁹ *Ṣawt al-Ahālī*, 28 May, 1947.

⁷⁶⁰ 'Abbūd, *supra*, ft. 755, at 513

⁷⁶¹ *Ibid.*

⁷⁶² *Ibid.*

⁷⁶³ Batatu, *supra*, ft. 41, at 621.

⁷⁶⁴ 'Abbūd, *supra*, ft. 755, at 513.

earlier, intensified and spread like fire throughout the country during the months of April and May, including of course throughout Basra.⁷⁶⁵ An atmosphere of despair was prevalent in Basra as the working class and common people struggled with the extreme inflation that characterized the year of 1948 – the prices of necessities continued to rise, while there was a shortage of wheat and barely.⁷⁶⁶ This situation was unbearable and its stark effects became more visible when the Regent visited the city, and a British official wrote, ‘the common people contrasted the magnificence of the HRH’s reception with the terrible quality of bread they were forced to eat.’⁷⁶⁷ It was later reported that bread was thrown at his car, while an old lady presented him with a piece of black bread, which she told him was ‘a specimen of what the poor had to eat in Basra.’⁷⁶⁸

The Port Workers’ Union once again drafted a signed petition listing their demands and sent it to the port administration and ultimately the Ministry of Social Affairs.⁷⁶⁹ Their demands were similar to what was called for before, emphasizing the application of the labour law to all workers. They were explicitly opposed to the piecemeal system of employment (*nithām al-qit’a*), whereby workers were hired and paid extremely low wages for specific tasks, such as loading and unloading cargo.⁷⁷⁰ The port workers employed by this unfair system were called ‘*Ummāl al-Arṣīfa*’ (‘the workers of the streets’) and were commonly referred to as *al-Masālīkh* (literally, ‘the naked ones’) as an indication of their miserable conditions. One of the union’s main and most consistent demands, therefore, was to address the plight of these most vulnerable workers of the port and to include them within the protections of the labour law, which was only applied to certain grades of workers, if at all.

The port administration refused to negotiate or even discuss the workers’ demands as the Electrical Manager called the police to prevent the electrical port workers from entering the offices of the administrator.⁷⁷¹ The Head of the Dredging Port at Fao was consequently asked whether he had a response to the petition and he replied, ‘there is no response and whoever does not want to work should leave immediately’.⁷⁷² It was this attitude of the port administration that forced the workers at Fao to come out on strike on April 4, followed by all port workers in Basra

⁷⁶⁵ TNA. ‘Basra Monthly Summary’, 18 May, 1948; E 6381/111/93 FO 371/68459

⁷⁶⁶ TNA. ‘Basra Monthly Summary, Oct. 1948’; FO 371/68459.

⁷⁶⁷ TNA. ‘Basra Monthly Report, 1 March 1948’; E2807/111/93; FO 371/68459

⁷⁶⁸ *Ibid.*

⁷⁶⁹ *Ṣawt al-Ahālī*, 30 February 1948.

⁷⁷⁰ Batatu, *supra*, ft. 41, at 443. These workers would receive as little as 40 to 60 fils.

⁷⁷¹ *Ṣawt al-Ahālī*, 30 February 1948.

⁷⁷² *Ibid.*

the next day.⁷⁷³ Only a couple days earlier, the dockworkers of the British shipping company Gray Mackenzie and Co were on strike, due to their ‘exceptionally low wages’ and the company’s evasion of the labour law with regards to sick and annual leave.⁷⁷⁴ Therefore, for the first time in the history of the Port of Basra, *all* the port workers of every department were on (a coordinated) strike and the entire port came to a complete standstill. The workers showed ingenuity in their organizational strategy when they used a new tactic, namely that of sabotage as they cut electricity from the port generator, which supplied the entire city.⁷⁷⁵ The city was consequently deprived of electricity and water for several hours, forcing the *mutasarrif* (at times in defiance of the Director-General of the Port) to end the strike on the same day with the ‘complete capitulation to the workers’ demands’.⁷⁷⁶ The agreement that was reached included an all round increase of 50 fils, and the reinstatement of 96 agitators who were dismissed for their actions in the previous strike.⁷⁷⁷

The strike ended with a clear moral and tactical victory not only for the port workers, but the labour movement as a whole, and the port authorities were forced to negotiate with the Port Workers’ Union and implicitly recognize it as the sole bargaining agent for all port workers. This triumph however did not last for long, as martial law was declared in May, apparently due to the termination of the mandate in Palestine and the pending war.⁷⁷⁸ This ‘new weapon’⁷⁷⁹ of emergency law, as one British official called it, and which I will analyze in detail in Chapter 6, was not only used by the Iraqi government to suppress all opposition, but to arrest all labour organizers and union leaders.⁷⁸⁰ By May 2, the Port Workers’ Union was entirely suppressed, while the search for communists was intensified to the extent that it was described in one report as ‘taken on the characteristics of a medieval witch hunt’.⁷⁸¹ Nevertheless, the deep experience and knowledge that the port workers gained was ingrained into their consciousness and their innovative approaches in strike action would be further developed, tried and tested in the port strike of 1952 and later on in the massive General Strike in Basra of 1953.

⁷⁷³ TNA. ‘Basra Monthly Summary for April 1948’, (18 May, 1948); E 6381/111/93 FO 371/68459

⁷⁷⁴ TNA. ‘Reported Ill-Treatment of Workers by Gray, Mackenzie and Co. Ltd’, 18 May 1948. E7015/7015/93. FO 371/68482.

⁷⁷⁵ TNA. ‘Basra Monthly Summary for April 1948’, (18 May, 1948), *supra*.

⁷⁷⁶ *Ibid*.

⁷⁷⁷ *Ibid*.

⁷⁷⁸ TNA. ‘Basra Monthly Summary for May, 1948,’ (14 June 1948), E8368/111/93, FO 371/68459.

⁷⁷⁹ *Ibid*.

⁷⁸⁰ The Military Court in Basra sentenced the president of the Port Union and two others to three years’ imprisonment. TNA. M.G. Little, Basra Consulate-General to J.C. Richmond, British Embassy, Bagdad, 1 June 1948. No. 1021, FO/624/127 (1948).

⁷⁸¹ TNA. ‘Basra Monthly Summary for June 1948’ (7 July, 1948), E9674/111/93, FO 371/68459.

Before moving on, it would be useful to summarize some of the insights that arise from the present narrative of the railway and port workers. It is clear that the workers were learning from their experiences. While the first strikes in the railways failed, those in the port were eventually successful. This illustrates the gradual but certain development of the labour movement as a whole. Furthermore, the manner in which the law was appropriated by the workers in their demands is a reoccurring theme, but here it happened in a much more cognizant way as semi-colonial legality, which was seen as a barrier to the application of Iraqi law as a whole (whether the Iraqi constitution or the labour law) was specifically confronted.

The port and railway workers (more so than the oil workers) were directly challenging the semi-colonial character of the Iraqi state. This is considering the fact that the semi-autonomous administrations of the railways and port were state-owned institutions that were not controlled by the Iraqi state. Furthermore, the strategic uses of and references to the labour law by the workers as the main source of their natural rights, which they saw as having been violated by the semi-colonial legal structures of the Anglo-Iraq Treaty and its annexures, demonstrates that the workers were not only concerned with the interpretation of law, but with the overthrow of a semi-colonial legal order and the establishment of a more just and truly independent one.

VI. Seeing like an expert: trade unionism as subversion & reform as counter-revolution

I will end this chapter with an analysis of the role of British labour experts within the institutions of the Iraqi state. Despite claiming that they did not have much control or influence, I will show that this was not the case and that the failure of the Iraqi government in dealing with the labour problems of the country was not merely due to their authoritarianism or incompetence as was repeatedly claimed, but rather to the very intervention of these so-called 'experts'. British experts refused to admit that it was their presence and the history of British intervention in any way instigated the 'labour troubles' that they were examining. It will be clear that these labour experts, who were assigned the tasks of addressing the major labour problems and developing recommendations for the Iraqi government, were not in fact genuinely concerned with the plight of the workers nor did they have a moderating effect on labour issues, but rather they were producing top-bottom social reforms to *prevent* any revolutionary or structural change to emerge from below. In other words, they were in fact concerned with the maintenance of the status quo of

British influence in Iraq and that was the reason why their symptomatic recommendations were ineffective and instead caused the further radicalization of the working class and the eventual eruption of revolution.

It was after the election of the British Labour Party in 1945 that a strategic shift occurred in foreign policy concerning the colonies and semi-colonies in the Empire. This new ideological shift was influenced by the initiative of the Foreign Secretary, Ernest Bevin, who's aim was to focus on social and economic development with the intention of countering the influence of revolution and communism, while maintaining British control in the region.⁷⁸² As Paul Kingston has shown, despite the fact that the problems in Iraq were fundamentally structural, Britain was merely interested in 'promoting socio-economic development without structural reform'.⁷⁸³ Although there was a long history of British technical assistance in Iraq before the war, more emphasis (at least in theory) was now put on serving the plight of the working class, the poor, and the peasants. The point was to reframe the relationship between Britain and the region in a way that *appears* reconciliatory to some nationalist demands, while ensuring that it would remain within 'the larger imperial design for the region'.⁷⁸⁴ In this way, one could argue that there were in fact fewer differences between the new Labour government and its predecessor in its principal goal of maintaining an imperial stronghold on the region – the only difference was that it would now be undertaken under the guise of social development and presented in a favorable light to the peoples of the region.

It was therefore during this period of late British imperialism, which has been described as 'an imperialism of science and knowledge,' where academic and scientific experts rose to positions of 'unparalleled triumph and authority'.⁷⁸⁵ It was in this context that British labour experts were appointed to deal with 'labour questions' of Iraq; questions that the British Ambassador considered as 'the most vital that this country has to face and that on their solution will largely depend the future of this country'.⁷⁸⁶ The main concern of course was regarding the

⁷⁸² See Paul Kingston. *Britain and the Politics of Modernization in the Middle East, 1945-1958* (Cambridge: Cambridge University Press, 1996).

⁷⁸³ *Ibid*, at 99.

⁷⁸⁴ *Ibid*, at 18.

⁷⁸⁵ Joseph Morgan Hodge. *Triumph of the Expert: Agrarian Doctrines of Development and the Legacies of British Colonies*, (Athens: Ohio University Press, 2007), at 11.

⁷⁸⁶ NAUK. 'Labour Conditions in Iraq' Stonehewer British Embassy, Bagdad to FO, Oct 29, 1946, E10974/3860/93. FO 371/52456.

effects of labour militancy and communist influence on trade unions.⁷⁸⁷ It was accordingly no coincidence that soon after the violent Gāwūrbāghī strike in the oil fields of Kirkūk in 1946 that a serious proposal was made for the need of having a British labour advisor in the Ministry of Social Affairs of the Iraqi state or as an alternative a permanent labour attaché to the British Embassy.⁷⁸⁸ After some discussion on what would be more effective, it was ultimately settled that a labour attaché⁷⁸⁹ would become a ‘special agent en mission’ rather than permanently attached to the Embassy, while the Iraqi government would eventually hire a labour advisor⁷⁹⁰ who would work from within the ministry.⁷⁹¹ It was noted that only ‘long and sustained pressure’ on the Iraqi government by an ‘Advisor working inside and an Attaché working outside’ that any results in implementing reforms would be achieved.⁷⁹² M.T. Audsley, an official of the Ministry of Labour and National Service, who was appointed as labour attaché in the British Middle East Office in Cairo in 1945 where he was based, would later act as the labour attaché to the British Embassy in Baghdad, frequently travelling there to investigate and write several detailed reports on labour issues. It was however only after the *Wathba* by the end of 1948 and following the severe waves of strikes that a labour advisor (W.J. Hull) was retained by the Iraqi government’s Ministry of Social Affairs⁷⁹³ – at the time the ministry responsible for all labour issues in the country.⁷⁹⁴

Before tackling the question of the role of the British expert in Iraqi state institutions and the limitations of expert analysis, it is important to explore the contradictory aspects of the British

⁷⁸⁷ TNA. Killearn to Bevin, 16 Jan 1946. J340/53/16, FO 371/53327.

⁷⁸⁸ TNA. Busk (Bagdad) to Baxter (London), 17 August 1946. E7015/3860/93. FO 371/52456.

⁷⁸⁹ The Labour Attache service developed as a result of the need to tackle the increasingly relevant questions of labour in Diplomatic Missions abroad starting from 1942. Its role usually entailed maintaining close contact with the ‘appropriate government departments, associations of employers and workers, and institutions operating in the labour and industrial fields’. Labour Attaches were spread throughout the British Embassies in many parts of the world. See Godfrey Ince. *The Ministry of Labour and National Service*, (London: George Allen & Unwin Ltd, 1960), at 57-58.

⁷⁹⁰ The role of the labour advisor in the Ministry of Social Affairs was detailed by Audsley in his 1948 report ranged over the whole of the living conditions of the people and would include wages; hours of work; national social insurance; control of prices of essential commodities from the cost of living index, land settlement schemes, housing, and the drafting of labour legislation, laws and regulations. Audsley described the advisor’s overall task as the laying of ‘the foundations upon which a progressive long-term development could be executed’ by providing ministers with ‘expert guidance’ which they are in dire need of. TNA. FO 371/68482. ‘Report on visit to Iraq from 8th June to 10th July, 1948 by M.T. Audsley’.

⁷⁹¹ One British official argued that an advisor working from within the Iraqi ministry would be ineffective unless he retained some executive powers as his reports would be ignored and ‘this could never be’, and so he concluded only a labour attaché to the Embassy would be a plausible option.

⁷⁹² TNA. Audsley to Waterlow, ‘Report on Iraq Labour problems’ E12918/77/93. FO 371/68458.

⁷⁹³ The Ministry of Social Affairs was created in 1939 and was responsible for population census, town planning and village organization as well. Sassoon, *supra*, ft. 141, at 51.

⁷⁹⁴ TNA. FO 371/68482. ‘Report on visit to Iraq from 8th June to 10th July by M.T. Audsley’.

expert analysis and its conception of trade unionism in Iraq. If one read the labour reports and dispatches written by these experts, it would be quite evident that the Iraqi worker was not only conceived in a certain orientalist manner (very similar to what was described in an earlier chapter), but that he was essentially erased as an agent from history. That is, for the British expert, a socially conscious *Iraqi working class did not exist* – at least *not as an organized labour movement*, but instead it was merely a group of illiterate workers who were being manipulated by subversive outside forces, making it not a genuine representative of the working class.

For that reason, it is quite ironic that the British expert would criticize the Iraqi government for being so irrationally repressive of labour in the country or quite incompetent in industrial relations, when he similarly saw the labour movement as a purely political subversive organization. The British Ambassador, for example, considered Iraqi workers as ‘illiterate workers’ who were constantly being exploited by ‘crooked lawyers and politicians’, while he referred to the Iraqi government as ‘a reactionary dictatorship to which the name of labour is anathema’.⁷⁹⁵ Even if one did not take into account the fact that the Iraqi state was itself functioning through the constricting legal structures of the Anglo-Iraq treaty, the British response towards labour organizing activities in Iraq was quite contradictory in terms and as I have shown earlier in the context of the railways, port and oil fields, was still repressive and violent.

In one labour report, Hull, the labour advisor to the Iraqi government, wrote, ‘the few trade unions here are not representative of the wage earners’,⁷⁹⁶ and in another that, ‘there is no likelihood of any organized or effective labour movement developing in the near future in Iraq’.⁷⁹⁷ These claims were made while he endlessly criticized the Iraqi government for not having proper (technical) understanding of the concept of trade unionism. As another British official illustrates this incompetence of the Iraqi government who regarded ‘the movement of labour as the movement of gangs of low paid workers from one place to another’ without having any conception of the organization of labour, and considered all trade unions as ‘hotbeds of communism’.⁷⁹⁸ The fact is, however, that the British administrators in general as I have shown above and in previous chapters in a similar manner rejected the legitimacy of the indigenous (grassroots) labour movement. In other words, it appears that the expert was merely critical of the

⁷⁹⁵ TNA. Stonehewer to FO, 25 Oct 1946, ‘Labour Conditions in Iraq’, FO 371/52456, E10773/3860/93.

⁷⁹⁶ TNA. Hull to Guildhaume, 26 June 1951. EQ 2181/1. FO 371/91704.

⁷⁹⁷ TNA. ‘Note on a meeting with Mr. Hull, Labour Advisor to the Iraq Government’ EQ2182/3. FO 371/98783 (23 July, 1952).

⁷⁹⁸ TNA. M.S. Rose, ‘Iraq Labour Problems’ 21 Feb. 1951. EQ2182/2. FO 371/98783.

Iraqi government because its repression was not done through a certain orderly and bureaucratic system of labour organization. What is interesting about this contradictory line of reasoning is that Hull as the British ‘expert’ analyzed trade unionism in a similar narrow manner. The only difference was that he claimed to be an ‘expert’ who had ‘expert knowledge,’ which was supposedly unbiased, and he was developing a national scheme and labour policy with the main purpose of *maintaining* British hegemony in the country.

So, for instance, Hull wrote that there was no freedom of association in Iraq, and that the executive of the Iraqi state would never relax its control over trade unionism and ‘the right to combine for any purpose’. He then referred to a conversation he had with someone he referred to as an ‘astute’ Iraqi banker, who explained to him that this was necessary because no political parties in Iraq have any real popular support and so ‘a street riot or strike could unseat a government’.⁷⁹⁹ Hull continued by arguing, approvingly of such analysis, that trade unionism in Iraq derives ‘from a conviction of immense power that could be exercised by anyone with only a few thousand well-organized workers behind him.’⁸⁰⁰ Hull here seems to be perpetuating (in a quite tautological manner) the same analysis of trade unionism, of which he was criticizing the Iraqi government’s incompetence for. His analysis maintained that all trade unionism in Iraq (whether it was anti-British or nationalist) had its basis on ‘purely political’ foundations and so was illegitimate and subversive. Furthermore, Hull’s conception of Iraqi workers was one that completely negated rational organized action and in an orientalist way emphasized Arab emotional temper; he described ‘the general state of the Iraqi worker as one of apathy’, from which ‘he could suddenly be stirred into outbursts of uncontrollable violence’.⁸⁰¹

In that sense, trade unionism in Iraq (and the region) was not considered akin to trade unionism elsewhere in the world (particularly in the West), and for this reason could not be analyzed as such, but rather could only be understood through the lens of an ‘expert’ with unique ‘expert knowledge’ of the local conditions, whatever this maybe. This same line of reasoning was made by Audsley, the labour attaché, when he wrote, ‘the present “industrial relations” bear no comparison with the pattern described in books. The Middle East is being shaken to its depth by the surge of political fanaticism, the fast growing “workers’ demands” and the grinding never-

⁷⁹⁹TNA. Hull to Guildhaume, 26 June 1951. EQ 2181/1. FO 371/91704.

⁸⁰⁰ *Ibid.*

⁸⁰¹ TNA. ‘Note on a meeting with Mr. Hull, Labour Advisor to the Iraq Government’ EQ2182/3. FO 371/98783 (23 July, 1952).

ceasing wheels of communism'.⁸⁰² The quotation marks in this sentence alone reveal more than anything the manner in which the British expert viewed trade unionism and the working class in Iraq and the Middle East in general.

The claim that was always maintained was that British experts or advisors in the Iraqi government did not in fact have any significant influence, but were merely there on a limited advisory role – that is, to use their ‘expertise’ to advise the minister on any given course of action. This arrangement was of course quite convenient in that the Iraqi government would always be blamed if problems persisted. However, if one were to read the records closely, it becomes clear that these experts actually had much more influence than was admitted. So, for example, Hull, the labour advisor to the Ministry of Social Affairs, demonstrates such deference towards his views in one episode, whereby he urged the Minister not to interfere with the elections of the tobacco and carpenter workers, claiming that these unions were harmless.⁸⁰³ The Minister responded with an Arab proverb – ‘the man who has once been bitten by a snake will start [sic] in fear at the sight of a piece of rope’. To this Hull replied, ‘there was here not even a piece of string’. The Minister then conceded that, Hull was the ‘expert’ and he knew better, so he would have to ‘reverse his view’.⁸⁰⁴

Reflecting on this episode, Hull wrote the following: ‘I dislike being called an expert but the title is the very essence of the position of a British official here. It implies if I am not mistaken an authority whose views may be overridden by other authorities but until they are must be listened to with respect even if not too much is done about them. These people are impatient of “advisors” – one must never call oneself that.’⁸⁰⁵ Hull’s observation reveals the manner in which British experts prefer not only to do their work out of view, but also to insist that they do not have any discretionary powers whatsoever. That is, the expert denies and underplays his influence and role within the ministry and the functions of the Iraqi state, although this was in fact exactly one of the effects of semi-colonialism and the Anglo-Iraq Treaty.

I will end this chapter by making a few points on why it was that the recommendations and reforms of both, the labour advisor and attaché, and their attempt at developing an overall national labour policy was a complete failure in the end. It was not primarily as it was

⁸⁰² TNA. Audsley (Cairo) to Morgan (Ministry of Labour, London), 18 May, 1948. LAB 13/674.

⁸⁰³ TNA. Hull to Guildhaume, 18 July 1950. EQ 2181/1, FO 371/98783 (3 Sep, 1950).

⁸⁰⁴ *Ibid.*

⁸⁰⁵ *Ibid.*

consistently claimed because of the incompetence of the reactionary and ‘feudal character’ of the Iraqi government and state, but it was rather due to the fact that these reforms were useless as long as the conditions of semi-colonialism existed. That is, as long as the constraining legal structures of the Anglo-Iraq Treaty were maintained.

The main aim of the overall workings of the advisor and attaché was to counter revolutionary change (and communism) and maintain British hegemony. It was in other words devised as ‘reform from above to forestall revolution from below’.⁸⁰⁶ Therefore, the recommendations for social reform which included: the drafting of and application of labour legislation, the establishing of minimum wages to alleviate the high cost of living, planning agricultural developments, and the development of what was referred to as ‘a constitutional Trade Union movement,’ were all means to ensure that British semi-colonial control would not be faltered.⁸⁰⁷ It was in other words merely a safeguard against any changes in the legal structures of the treaty and the semi-colonial legal order. Audsley made this very clear when he wrote that Iraqi workers should not be encouraged as they have been by the Russians, ‘to rebel against their government’, but rather to pursue their interests in a ‘democratic manner’:

The Russians have no scruples in this respect, as elsewhere. They are anti-Government, anti-British, anti-evolution, anti-democratic; their methods of encouraging revolution are well-known...[W]e are...anti-Communist. We do not preach revolution; the Russians do... We want to see orderly progressive social betterment of the people, the removal of injustice, better living conditions, freedom to create democratic workers’ organizations – even if the pace is slow; the Russians do not. Somehow or other we must convince the Iraq Government...that it is in their hands to pave the way towards bringing order out the present social chaos...and that they must give encouragement to and secure the co-operation of, workers’ leaders and other who are hostile to revolutionary methods.⁸⁰⁸

Here, Audsley does not mince words when he emphasizes the real aim of these labour and social reforms, and the role of British experts in dealing with the question of labour in Iraq. Even Hull, the labour advisor, viewed his initiative of developing a new Directorate-General of Labour as not merely being as ‘an essential service for a modern state’, but specifically because it ‘could do more than any other to prevent the growth of communism’.⁸⁰⁹ In that sense despite the fact that the British viewed themselves as having a ‘moderating influence’ on a ‘reactionary’ government, they were in fact doing the complete opposite in further radicalizing the working class.⁸¹⁰ This is

⁸⁰⁶ See Rachel Anne Alexander. ‘Leadership in the National Movements of Egypt and Iraq 1945-1963’, (Unpublished PhD Dissertation, University of Exeter, 2007), at 151.

⁸⁰⁷TNA. FO 371/68482. ‘Report on visit to Iraq from 8th June to 10th July by M.T. Audsley’.

⁸⁰⁸ *Ibid.*

⁸⁰⁹TNA. Hull to Guildhaume, 18 July 1950. EQ 2181/1, FO 371/98783 (3 Sep, 1950).

⁸¹⁰ Alexander, *supra*, ft. 806, at 152.

probably because Iraqi workers (in the oil fields, railways and port) rather than being illiterates with no agency were quite conscious of what was being done to their movement.

Furthermore, legal reform, especially in the context of semi-colonialism, could never bring about real structural change. This was due to the controlling influence of the legal structures of the Anglo-Iraq treaty (and the effects of semi-peripheral sovereignty), which retarded the effectiveness of Iraqi law in the first place. However, this was also due to the *political* question of semi-colonialism, which concerns the entire order and is not merely one that concerns legality. It was this fact that was completely ignored in any of the analyses of British experts. As Fahad has written on such a narrow analytic lens: some (British experts) would soon ‘rise to the moon and some would sink into the depths of the earth’ before admitting that ‘the main cause of unemployment in this country is in front of their eyes’: the foreign monopolistic companies that control the economy.⁸¹¹ Audsley and Hull likewise refused to admit what was in front of their eyes, which was British semi-colonial intervention, which they were a part of. It was no wonder that Audsley did not interview a single trade union leader for his investigative reports, supposedly for fear that his motives would appear suspicious to the government.⁸¹² While even when he was approached by a trade union leader, who conveyed to him the exact concerns of the majority of the working class, he completely disregarded his statement as too ‘sweeping’:

I remember an Iraq Trade Union official saying to me...that the workers blamed us for everything that happened in their country; that the Treaty of Alliance which replaced the Mandate in 1932 had not lessened our interfering influence and that we had something to do with everything major event in Iraq since then; that if the country had remained backward, if its general standard of life was terribly low and if the social conditions were appalling the most accepted reason among large sections of the public was that British policy wanted it to be so...These were sweeping statements and I doubt whether the antagonism towards us is as general as they imply but they are certainly the ammunition used by the vocal extremists and political agitators to further their subversive and destructive ends.⁸¹³

Audsley’s refusal to admit that British semi-colonial intervention in Iraq was a major cause of the conditions of the Iraqi working class is more than disingenuous, for it was the arrival of British colonialism and capitalism that permanently destabilized the rural areas and the socio-economic structures of Iraqi society, establishing underdevelopment, as I have shown in a previous chapter. Of course, Audsley’s view was also informed by his conception of the Iraqi worker as having a ‘fanatical temperament’ and who was incapable of consciously and deliberately organizing action against the semi-colonial conditions that oppress him. My narrative of the railway and port

⁸¹¹ Yūsūf, *supra*, ft. 305, at 186.

⁸¹² TNA. FO 371/68482. ‘Report on visit to Iraq from 8th June to 10th July by M.T. Audsley’, at 19

⁸¹³ *Ibid.*

workers above exposes the absurdity of such analysis. It was therefore the limitations of the expert's analysis and lens (as well as its specific ideological purpose), which prevented any of the social and labour reforms (no matter how genuine they may appear) from being effective and failed to prevent the outburst of revolution from below.

VII. Conclusion

This chapter detailed the struggle of the railway and port workers to improve their conditions and to challenge the legal structures of semi-colonialism that governed their workplaces. These workers were directly challenging the semi-colonial character of the Iraqi state and its semi-autonomous enclaves of the railways and port. This was different from their counterparts at the oil fields who's struggle had more of a regional and international dimension in resisting (oil and corporate) imperialism within the specificity of the oil city in the region, which had more of the characteristics of a colonial rather than a semi-colonial enclave. I have shown how the railway and port workers slowly but inventively developed their organizational tactics and strategies in strike action from their first attempt at the railway workshops to their (pivotal but momentary) victory at the port. The port and railway workers were attempting to bring structural and normative change into their lives through their actions from below and they often did this by strategically using and referring to the law as (only) *one* of their arsenals, hand in hand, with strike action and sabotage. This was of course the complete opposite of how British experts used the law in their development of labour and social reforms to supposedly remedy the ailments of the working class – theirs was an imposed top-bottom and bureaucratic development for the mere purpose of preventing any structural change. The expert's approach was merely a strategy for maintaining British hegemony and the semi-colonial structures in Iraq, which the workers completely rejected as they considered British intervention as being the main cause of their miserable conditions.

Chapter 6: The ‘Magical Weapon’ of Permanent Emergency – A Technique in the Semi-Colonial Governance of Iraq

The tradition of the oppressed teaches us that the ‘emergency situation’ in which we live is not the exception but the rule.⁸¹⁴

~ Walter Benjamin

[Y]our part of the world is likely to make big strides forward...not without struggle perhaps, but nevertheless in the direction of progress toward a fuller and more secure life, and such [draconian] laws will...become things of the past to be studied by research students into obscure subjects.⁸¹⁵

~ Denis Pritt

I. Introduction

As the previous chapters have shown, it was through the use of emergency law that labour strikes were suppressed. In this chapter, I will argue that the uses of the emergency doctrine was a technique of semi-colonial governance in Iraq. This chapter is therefore an exploration of the interconnection between law and violence in the context of the uses of criminal law and martial law by the semi-colonial Iraqi state. In other words, I will analyze the manner in which the Iraqi state used a combination of criminal law, martial law and the doctrine of emergency to suppress opposition to the social order and to maintain its hegemony. The argument that will be made here is that the semi-colonial Iraqi state used tried-and-tested British colonial techniques of governance by constitutionalizing the Crown’s ability to proclaim emergencies to quell any disorder that it considered as a threat to its order. By delving into the historical origins of the doctrine of emergency, it would be clear that it was in fact a technique of governance rather than a temporary response to isolated crises. Martial law was a standard mechanism used to

⁸¹⁴ Walter Benjamin. ‘Theses on the Philosophy of History,’ in Hannah Arendt (ed.), *Illuminations: Essays and Reflections*, (New York: Schocken, 1969), at 253.

⁸¹⁵ TNA. Letter from D. Pritt to K. Kazanji [i.e. Qazanchi], dated 20 March 1946, enclosed in D. Pritt to McNeal, 18th July 1947, E6508/771/93, FO 371/61664.

protect British interests in the colonies, and it was similarly and regularly used by the semi-colonial Iraqi state. I will elucidate how this mechanism was ingrained into the institutions of the Iraqi state and its constitution with the legal advice of British experts. It will be clear that Iraq was ungovernable (as an ‘independent’ ‘parliamentary democracy’) without these legal techniques, as revolutionary change was inevitable. It was in a way these colonial (legal) techniques that helped suspend the advent of the revolution until 1958.

Before turning to the debates surrounding emergency law and briefly focusing on the *Intifāda* of 1952 (an attempt to renew the *Wathba*)⁸¹⁶ where the military was called into the streets for the first time in the history of the country to quell demonstrations, I will begin with a brief examination of how the criminal law was used to pacify all forms of dissent under the guise of fighting communism. These laws were in turn essential in a state of emergency. This is clear when analyzing the amendment to the *Baghdad Penal Code* of 1938, and its application in the first trial of the Secretary-General of the ICP, Yūsuf Salmān Yūsuf (Fahad). The military courts relied on the 1938 amendment to imprison thousands, while eventually sentencing ICP leaders to the death penalty.

II. The uses of the criminal law by the Iraqi state & the criminalization of progressive thought and action

Even before the institutionalization of emergency with the controversial amendment of the Iraqi Constitution in 1943, which I will analyze in the second part of this chapter, the Iraqi government was continuously developing new ways of drafting legislation against what it saw as the spread of communism and leftist ideology in the country. This would eventually lead to the passing of an amendment to the *Baghdad Penal Code*, which would be considered as the harshest piece of legislation against communism – defined in the broadest possible way – in the entire Middle East – this was the *Law Supplemental to the Baghdad Penal Code No. 51 of 1938*.⁸¹⁷ I will analyze this law below, but for now it would be enough to note that it made it a crime to believe in the ‘doctrines of communism, anarchy and the like, which aim at the change of the system of government,’ (which was interpreted broadly enough to include anything that called for

⁸¹⁶ I fast forward to the Intifada of 1952 merely because it was the first time that emergency legislation was invoked on the basis of the controversial constitutional amendment as opposed to during the *Wathba* when martial law was already declared on the basis of the Palestine War, which was in turn used as an excuse to crush the movement as will be shown in the final chapter.

⁸¹⁷ *Iraq Government Gazette*, No. 30, Baghdad, 24th July, 1938, at 475

social reform) and the dissemination of these ideas. This was in essence the criminalization of thought and it would be consistently used against the opposition and the nationalist movement throughout the history of the monarchy.

As early as April 1936, the Iraqi government passed a law that amended the *Baghdad Penal Code* in a manner that made it more effective in prosecuting those who possessed, printed or intended to publish through ‘the medium of communist propaganda [and] endeavor[ed] to create hostility to the established system of government’.⁸¹⁸ Although the definition of ‘communist propaganda’ was already broad, the Minister of Interior approached the British Ambassador, Archibald Clark Kerr, the next year for advice on the ‘form and scope’ of drafting ‘special legislation’ that would be even harsher, and would essentially ‘make it a crime to be a Communist’.⁸¹⁹ Despite admitting that the Iraqi government were ‘exaggerating the dangers of the spread of modern political ideas in this country’ by seeking to draft such legislation, Kerr contacted the Foreign Secretary to the Government of India, and asked him to send copies of laws passed in India, which he considered to have been successful in dealing with communism.⁸²⁰ By September 1937, *Ordinance No. 44 for the Prevention of Harmful Propaganda* was passed. This ordinance increased the powers of the government in dealing with ‘communism’ further by enlarging the scope of the term ‘harmful propaganda’ to the following: (1) ‘Any publication effected in bad faith...of a nature calculated to arouse: (a) Feelings of hatred or aversion for the state, or (b) Feelings of aversion or hostility among various classes of the inhabitants. (2) Any publication effected in bad faith... citing fabricated reports or misinterpreting any true report, with the object of disturbing public security or good foreign relations.’⁸²¹ This definition of ‘harmful propaganda’ included ‘meetings’ intended on ‘exciting the public against the state or arousing feelings of aversion or hostility among the various classes of the inhabitants’.⁸²²

⁸¹⁸ TNA. FO 624/7. Sgd Archibald Clark Kerr, Bagdad to FO, London, 29 April, 1936. A copy of the law [*Law Amending the Bagdad Penal Code No. 45 of 1936*] was enclosed and had similar wording to what would be drafted later in 1938. The law stated that the following paragraph shall be added to Section 89 of the Code: “Whoever is found in possession of written or printed or any other matter intended for publication, of which the contents come within the scope of the previous sub-sections, shall, if found to have come to posses the same with ill intent and with intent to give publications thereto, be punished with the penalty provided for each offence itself.”

⁸¹⁹ TNA. FO 624/9/516. Sgd Archibald Clark Kerr, Minute Sheet, 19, November, 1937.

⁸²⁰ TNA. FO 624/9/516. Archibald Clark Kerr, British Embassy, Bagdad to Sir Herbert Metcalfe, India; Nov 23, 1937.

⁸²¹ TNA. FO 624/9/576, Oswald Scott, British Embassy, Bagdad to FO. 18, December, 1937. Enclosed: *Ordinance for the Prevention of Harmful Propaganda No. 44 of 1937*. This law was eventually repealed.

⁸²² *Ibid*. It is interesting that the term ‘class’ is used, which is of course a reference to the poor workers and peasants.

In July 1938, *Law Supplemental to the Baghdad Penal Code No. 51* was passed and as mentioned above made it a crime not only to disseminate ‘communistic’ ideas, but to ‘express approval’ of these ideas! Article 1 (1) read: ‘Whoever expresses approval of or disseminates by any of the means of publication mentioned in Article 78 of this Law, any doctrines of communism, anarchy or the like, which aim at the change of the system of government and the fundamental principles and status of human society that are guaranteed by the Organic Law, shall be punished with penal servitude or with imprisonment not exceeding seven years or with fine or both.’⁸²³ Article 1(2) increased the sentence to penal servitude for life or imprisonment for fifteen years if the ‘expression of approval or dissemination of the doctrines’ was carried out with violence. Article 1(3) stated that if the latter occurred before more than one member of the military forces or police, the death penalty would be applied. Article 5(a) extended these penalties to anyone ‘who becomes a member of an association the aim or object of which is to approve or to disseminate’ these doctrines.⁸²⁴

Law No. 51 would be used throughout the period of the monarchy to suppress not only communism, but also all forms of opposition. It would be particularly useful for the military courts that were operational when martial law was proclaimed. It is interesting to note that even the British advisor to the C.I.D. (Criminal Investigation Department) criticized the law for being drafted in a manner that would undoubtedly bring about hostile comment from the Soviets, who the advisor said would ‘rightly protest that this law is a Nazi law’.⁸²⁵ He pointed out that the *Baghdad Penal Code* was already sufficiently worded to deal with communism and that the ‘institutions of prosecutions against alleged “communists” for their actions as such, and not as ordinary disturbances of public peace stirring up and propagating [sic] in a manner intended to cause hatred and contempt against other sections of the people and against the Government charged under the appropriate sections of the Baghdad Penal Code, would undoubtedly call forth hostile comment, if not actual diplomatic protest...’⁸²⁶ The *Baghdad Penal Code*, he wrote, was ‘strong enough – if applied properly and impartially.’⁸²⁷ This advice was not taken seriously and instead *Law 51* or what would later be dubbed in British reports as: ‘Grobba’s law Against

⁸²³ *Ibid.*

⁸²⁴ *Ibid.*

⁸²⁵ TNA. FO 624/101. CID TO A.H. Ditchburn, Advisor to Ministry of Interior, 30 June 1946.

⁸²⁶ *Ibid.*

⁸²⁷ *Ibid.*

Bolshevik Communists,'⁸²⁸ would be used extensively, especially during the *Wathba* as a legal and violent measure to suppress the entire Iraqi nationalist movement.

In fact, by March 1948 (before the proclamation of martial law), Najīb al-Rāwī, the Minister of Justice, was described in a dispatch by the British Ambassador, Henry Mack, as 'refreshingly active and vigorous' in his pursuance of numerous communists, who were continuously being sentenced under this law in the courts. al-Rāwī directly consulted British Judge and legal advisor to the ministry, Sir John Prichard in putting together a list of suspected communists who should be arrested, while suppressing the opposition press, and ensured that suspected communists were removed from 'positions important to the security of the state'.⁸²⁹ Furthermore, what was more interesting for our purposes was that other countries in the region were coordinating to do the same thing. al-Rāwī was in close contact with the Minister of Justice in Egypt, who was looking to pass similar legislation against 'communism' there.⁸³⁰ The head of the C.I.D. in Egypt visited Baghdad to discuss such measures counterpart there to exchange lists of suspected communists. He ended up taking with him copies of the Iraqi laws (specifically *Law 51*). al-Rāwī made similar arrangements with his counterparts in Syria and Lebanon supplying them with Iraqi laws with the purpose of developing 'a common Arab League policy against communism'.⁸³¹ Mack expressed 'great pleasure' at this development.⁸³² The diffusion of these draconian laws suggests that they were of great benefit in maintaining the semi-colonial orders to the benefit of imperial powers in the region.⁸³³

It was on the basis of *Law 51* or *Grobba's Law* that Yūsuf Salmān Yūsuf aka Fahad, the Secretary-General of the ICP, along with his close comrade and Politburo member, Zakī Basīm, were prosecuted after their capture on January 18, 1947.⁸³⁴ They were accused of reliance on

⁸²⁸ *Ibid.* A reference to the former (Nazi) German Ambassador in Iraq, Fritz Grobba, who supported the Rashid Ali Coup of 1941 against the British-sponsored regime.

⁸²⁹ TNA. Minute by Henry Mack, 16 March 1948; FO/624/127.

⁸³⁰ *Ibid.*

⁸³¹ *Ibid.*

⁸³² *Ibid.*

⁸³³ The reworking and redrafting of draconian legislation in such a manner did not end here. By 1954, a list of ordinances and amendments were passed that were even more draconian. One was *Ordinance No. 17 of 1954 Supplemental to the Iraqi Nationality Law*, which basically stripped citizens of their Iraqi citizenship if they were convicted under the 1938 law above. This rendered communists or anyone who opposed the regime as stateless. The legal advisor to the British Embassy found this law completely 'indefensible' and contrary to the 'general principals of international law'. This practice, which began during the *Wathba*, was later to be institutionalized in law. See Minutes in 'Communists in Iraq,' Oct 14, 1954, VQ 1015/77/G, FO 371/110991.

⁸³⁴ Batatu, *supra*, ft. 41, at 537.

‘foreign sources of income’; contacts with a ‘foreign state’ (i.e. the Soviet Union); incitement to armed insurrection; and the most serious: the propagation of communism among members of the armed forces.⁸³⁵ All these accusations were flatly denied by Fahad, who eloquently addressed the judge on each of them, stating that the party was independent in its finances and organization, and was not intent on overthrowing the monarchy, but rather merely struggling for the people’s natural rights and the democratic order as defined by the Iraqi constitution.⁸³⁶ It was quite revealing that he referred to the constitution, especially to argue that *Law 51* was unconstitutional.⁸³⁷ He considered the Iraqi Communist Party – at least for the time being – as in effect struggling for the protection of the provisions of the Iraqi constitution against the regime’s ‘terroristic’ policies and the ‘imperialist’ 1930 Anglo-Iraq Treaty, which undermined it.⁸³⁸ This sort of reasoning would be reiterated in nationalist discourse (including by opposition MPs in Parliament) in the context of martial law and emergency legislation as will be shown later. Fahad had already referred to *Law 51* in his writings, calling it a ‘reactionary fascist law’, that was a ‘weapon in the hands of the Iraqi regime and its police’ not merely to suppress the communist movement, but also to suppress the labour movement and the nationalist movement in its entirety.⁸³⁹ He repeated this point to his interrogator the day he was arrested. When asked whether he knew that propagation of communism is liable to punishment under the penal code, he responded: ‘The relevant article 89a of the Code...is out of accord with the Iraqi Constitution, which has conceded the freedom of belief of every Iraqi citizen.’⁸⁴⁰

⁸³⁵ *Ibid*, at 539.

⁸³⁶ *Ibid*, at 540.

⁸³⁷ One should keep in mind that this was done in a rhetorical manner and was strategic. In other words, Fahad, as a communist and adherent of historical materialism, did not actually believe in the ideal of the rule of law as a source of revolutionary change. However, it was obvious that to struggle for this ideal had its strategic benefits considering the semi-colonial conditions of Iraq, where the law was flaunted and democracy was a farce.

⁸³⁸ A public memorandum written by the ICP and addressed to the international community with reference to the UNO Charter [and international law], emphasized that ‘the demands of our Party expressed by our National Charter, are ... for achieving liberties, for the exercise of the rights recognized by the Iraqi constitution, for the demand of making the independence of our country a reality not a word of the mouth. This signifies that our Communist Party does not intend to change the state system and the fundamental principles and constulates [sic] of the social constitution. On the contrary, it intends to stabilize the representative, democratic state system and fights to stabilize the fundamental constulates [sic] recognized in our constitution, such as Iraq as an independent state. At no time, [did] we make an appeal or carried out a slogan involving the change of state system. All our slogans and official statements involve the call to fight imperialism, to stabilize the democratic state system and to accomplish our independence and national sovereignty. We did not call for an armed revolution as the government accuses us; for no responsible body in our party has ever issued an appeal for the masses arousing them to armed revolution”. TNA. Translation of memorandum by ICP dated 5 June 1947, enclosed in FO/624/116.

⁸³⁹ Yūsuf. *Kitābāt, supra*, ft. 305, at 434-435.

⁸⁴⁰ As quoted in Batatu, *supra*, ft. 41, at 538

A public memorandum written by the ICP described the trial proceedings as ‘nothing... [more]...than a comedy of which the acts were set by the C.I.D.’⁸⁴¹ This was not an exaggeration. The trial proceedings became increasingly farcical when resembling a Kafkaesque subplot, Kāmil Qazānchī (who would later lead the Coordination Committee of the *Wathba* movement) at the time, chief defense counsel, was arrested in the middle of the trial and charged under the very same law (*Law 51*) after he made an impassionate plea on behalf of his communist clients! This of course demonstrates how broadly drafted this piece legislation was and how it was used by the police and prosecution. Qazānchī was accused of being a communist agent financed by the Soviet Legation.⁸⁴² This led the other nine attorneys to resign, and the defendants were left ‘deprived of the sacred right of defense’.⁸⁴³ Consequently, the police and prosecution in ‘an exposed manner, was itself conducting the court proceeding, in directing questions and in answering them sometimes, instead of the accused’.⁸⁴⁴

The Higher Criminal Court ultimately found Fahad and Basīm guilty, sentencing them to the death penalty. The ICP memorandum suggested that the verdict was decided in unison with the government without taking any of the evidence into consideration, abandoning both Iraqi law and the principles of international law. It was only due to an unexpected regional and international outcry that the sentences were eventually commuted to penal servitude for life and fifteen years respectively. One of these appeals came from the British socialist lawyer and MP, Denis Pritt, who in an intense exchange in the House of Commons, questioned the Secretary of State for Foreign Affairs, Christopher Mayhew, on the trials: ‘Is the hon. Gentleman aware

⁸⁴¹ TNA. Translation of memorandum by ICP dated 5 June 1947, enclosed in FO/624/116.

⁸⁴² British Embassy, Bagdad to FO, London; 4 June 1947, E5041/77193, FO 371/61664. See *al-Zamān* newspaper, September 2, 9 and 10, 1947 for details of the court proceedings. Qazānchī’s office was raided and papers were confiscated that were used as evidence against him. The chief evidence relied on were letters of correspondence with Labour MP, Denis Pritt, regarding the translation of his books into Arabic. The prosecution considered Pritt a ‘Communist [British] MP’. Pritt consequently sent impassionate pleas to the FO asking them to intervene into Qazānchī’s case. See, D. Pritt to McNeal, 18th July 1947, E6508/771/93, FO 371/61664. (The letter used by the prosecution is also enclosed therein). The appeals court eventually acquitted Qazānchī, and this was probably due to Pritt’s appeals to the British Foreign Office. Iraqi lawyers and the nationalist movement never forgot Pritt’s contribution to their struggle. Ironically, after the Revolution, Pritt (this, ‘Communist MP’) would be greeted from the airplane by a large group of lawyers and half the Cabinet as he recounts in his memoirs: ‘As I entered the [airport] building itself, I heard an Iraqi bystander say something which made people smile. I asked what he had said, and was told that it was: “What Englishman could there possibly be who deserves such a welcome here?”’ *The Autobiography of D.N. Pritt*, (London: Lawrence & Wishart, 1965), at 135.

⁸⁴³ TNA. Translation of memorandum by ICP dated 5 June 1947, enclosed in FO/624/116

⁸⁴⁴ *Ibid.*

that... [t]hese [Iraqi] gentlemen have, in fact, been sentenced to death for writing pamphlets, in support of trade unionism?⁸⁴⁵ Will he, therefore, get our representatives in Iraq to have an unofficial word with that country? It is controlled by our Army [after all].’ To which Mayhew’s response was to evoke Iraqi (semi-peripheral) sovereignty to argue that there was no ground for intervention, while completely denying that the British Army controlled Iraq through the Anglo-Iraq Treaty!⁸⁴⁶

It was only after martial law was declared during the *Wathba* did the regime have another chance to retry and ultimately execute the ICP leaders. I will return to this episode in the final chapter on the *Wathba*. The point for now is that an intricate web of draconian criminal legislation was developed to complement the violent uses of the doctrine of emergency so as to maintain the regime’s semi-colonial hegemony.

III. The Magical Weapon of Emergency as a Technique of Governance

The question in the remaining part of this chapter will revolve around the doctrine of emergency and its uses in the context of the semi-colonial Iraqi state. In other words, why was it that up to the 1958 revolution the Iraqi state was dominated by continuous states of emergency and proclamations of martial law? There were a total of sixteen proclamations of martial law in the 37 years of the existence of the Iraqi Hashemite monarchy (between 25 October 1925 until the eve of the revolution on 13 July 1958).⁸⁴⁷ From the seventeen years between the second occupation of Iraq in 1941 up to the fall of the monarchy in 1958, nearly nine of these years were

⁸⁴⁵ Of course, what Pritt meant was that they were sentenced to death merely for their political beliefs – i.e. for being communists. Although as we have seen Fahad did in fact help in drafting a significant number of pamphlets for the railway and port unions amongst others.

⁸⁴⁶ TNA. E 5831/771/93; FO 371/61664. ‘Parliamentary Question’, 30 June 1947. The British government continued to claim that there was no ‘locus operandi’ to intervene into the affairs of a sovereign country. Here it is quite obvious how the discourse of semi-peripheral sovereignty operated as it allowed the British imperial power to assert Iraqi sovereignty rights, while furthering their imperial interests. Ironically, a handwritten minute from the FO in London emphasized that, ‘if we intervene [on the sentences passed] it would give the impression that we run Iraq’, and ‘we should not get into a rebook to the application of the laws of Iraq forbidding the dissemination of communist doctrine’. TNA. E6509/771/93; 18 July 1947. ‘Sentences on the Iraqi Communists’ FO 371/61664.

⁸⁴⁷ Haydar ‘Abdul Hādī, *Dirāsāt fī Qānūn al-Huqūq al-Insān* [Studies in Human Rights Law], (‘Amman: Dār al-Hamad, 2009), at 191.

dominated by a state of emergency of some form or another.⁸⁴⁸ The question therefore is whether this pattern reveals something of how a semi-colonial state that was considered ‘independent’ under international law still heavily relied on the colonial doctrine of emergency to govern its population and maintain its social order.

The answer, as will be shown, is that there was a clear pattern, which suggests that it was partly due to such (legal) technique that the Iraqi regime lasted a decade after the *Wathba* until it was finally overthrown. Furthermore, it was with the uses of martial law that the criminal legislation detailed above was used more effectively and systematically in the military courts. A good example of the effects of martial law could be found in a monthly report from the Basra Consulate-General, which in an astounded tone referred to martial law as a ‘new magical weapon’ of the government. Referring to the declaration of martial law in May of 1948, the report stated that ‘the situation cleared almost magically’ and that ‘power was now once more in the hands of government and there were few delusions as to how it would use its new weapon’.⁸⁴⁹ It also stated that ‘British popularity soared’ right after the imposition of martial law.⁸⁵⁰ How and why was this the effect of martial law?

My aim in this chapter is to explore this ‘magical weapon of governance’ with the hope of grasping just how it operated and how it affected the organizing efforts of the nationalist movement and the labour movement. I will begin with a brief historical contextual recounting of the doctrine of emergency in Britain and its colonies so as to trace its origins. I will then move to detail the *Intifāda* of 1952, which was an uprising that led to the call of military forces into the streets of Baghdad to maintain order. This will lead to an analysis of the legal history of the doctrine of emergency, specifically focusing on the constitutional amendment of 1943, which gave the Crown the authority to proclaim a state of emergency whenever the monarchy was threatened by a ‘crisis’. After tracing the legal history of emergency and the manner it was institutionalized in the governing and constitutional structures of the Iraqi state, I will look at some of the debates inside and outside of parliament revolving around this question, especially focusing on the work of the social democrat, opposition MP and legal scholar, Hussein Jamīl.

⁸⁴⁸ ‘Aqīl al-Nāsirī. *Al-Jaīsh wa al-Sulta fi al-‘Iraq al-Malakī*, 1921-1958 [The Military and Government in Monarchial Iraq], (Damascus: Dār al-Hassād li al-Nashir wa al-Tibā‘a wa al-Tawzī’, 2000) at 154.

⁸⁴⁹ TNA. ‘Basra Monthly Summary’, Oct 1948, FO 371/68459.

⁸⁵⁰ *Ibid.*

A. The origins & uses of martial law: tracing the history of the doctrine of emergency

If one were to trace the evolutionary and historical development of martial law from England to the colonies, it would become clear how the doctrine of emergency was used specifically as a ‘technique of governance and instrument of control, rather than a purely reactive and temporary response to an isolated crisis’.⁸⁵¹ Moreover, as John Reynolds and others have argued it was not just in the colonies that the doctrine of emergency was diffused, but it was also distilled into the normative framework of international human rights law, with the derogatory provisions therein.⁸⁵² In this sense, in this study, it should be understood broadly in relation to the semi-peripheral sovereignty granted to Iraq through international law and the mandate system.⁸⁵³

The origins of martial law in England could be traced to the medieval conception of ‘military law,’ which was a system of regulations developed to maintain order and discipline of the armed forces. From the fourteenth century onwards, the ‘justice of martial law’ was to be applied not only to soldiers and sailors in wartime, but later extended to civilians, in particular rebels, traitors, and rioters among others.⁸⁵⁴ It was unclear what was the exact scope of these powers under martial law, but it was considered as a ‘summary form of criminal justice’ that was separate from the ordinary courts.⁸⁵⁵

There were competing theories as to the foundations and parameters of martial law amongst English legal scholars. One theory emphasized that martial law operated within the parameters of the rule of law. A.V. Dicey famously asserted that martial law was, ‘unknown to the law of England,’ which illustrates, ‘unmistakable proof of the permanent supremacy of the law under our constitution’.⁸⁵⁶ Dicey meant that under English law authority would never fully pass to the military and so martial law remained within the purview of the rule of law. It was in this sense derived from the common law, ‘right of the Crown and its servants to repel force by

⁸⁵¹ John Reynolds. “The Long Shadow of Colonialism: The Origins of the Doctrine of Emergency in International Human Rights Law,” (2010). *Comparative Research in Law & Political Economy*. Research Paper No. 19/2010, at 4. <http://digitalcommons.osgoode.yorku.ca/clpe/86>.

⁸⁵² See John Reynolds. *Empire, Emergency and International Law*, (Cambridge: Cambridge University Press, 2017).

⁸⁵³ *Ibid*, at 5. Let us not forget that the ratification of the Anglo-Iraq Treaty in parliament was itself imposed through martial law. See Chapter 3.

⁸⁵⁴ J.V. Capua, ‘The Early History of Martial Law in England from the Fourteenth Century to the Petition of Right,’ 36:1 *Cambridge Law Journal* (1977), at 152, 153.

⁸⁵⁵ *Ibid*.

⁸⁵⁶ A.V. Dicey, *Introduction to the Study of the Law of the Constitution*, (8th ed. 1915), at 289.

force in the case of invasion, insurrection, riot, or generally of any violent resistance of law'.⁸⁵⁷ This had its basis on the common law defense of necessity. In other words, as long as the force used to suppress a riot was 'necessary,' it was considered to be lawful.⁸⁵⁸ An alternative theory suggested that martial law did suspend ordinary law for military rule, but it was only temporary and hence still operated within the constraints of the law.⁸⁵⁹ In other words, the suspension of ordinary law was similarly done out of 'necessity,' and was constrained by the constitution. A third view stated that martial law was not law, but rather as Lord Wellington's famous 1851 formulation, in relation to the use of martial law in Ceylon, the 'will of the General who commands the army'.⁸⁶⁰ Here, emergency law is considered as being outside the purview of the law, merely limited by the General's practical judgment on the field.

It was not until the mid-sixteenth century that martial law in Britain was extended from instances of war and rebellion to an offensive measure of governance used in peacetime. It was during this time that martial law was used as a weapon of class and political repression against, 'general undesirables with no apparent means of support'.⁸⁶¹ During the 'Pilgrimage of Grace' in 1537, for instance, Henry VIII instructed his commanding lieutenants to, 'continue to proceed by martial law until the country was in such terror as to insure obedience'.⁸⁶² This use of martial law, which was first widely used in Ireland, continued in England in certain variations until it was outlawed by parliament after the passing of the Petition of Right in 1628.⁸⁶³

Although the Petition of Right led to the disuse of martial law in Britain, this was not the case abroad where its colonial uses proliferated becoming, 'an essential part of the security apparatus of many colonies in the empire'.⁸⁶⁴ Martial law was turned into a mechanism of control

⁸⁵⁷ *Ibid*, at 284.

⁸⁵⁸ Dicey's theory, which is championed by contemporary scholars like David Dyzenhaus, should not be understood outside its historical and practical context – or the specific political and class position that Dicey came from. Dicey vehemently opposed Irish independence, female suffrage, and the rights of the working-class. His notion of the rule of law explicitly, 'embraced the deployment of autocratic powers to defend the British Empire and its ruling elites.' See Michael Head. *Emergency Powers: Theory and Practice* (Surrey: Ashgate, 2016), at 99.

⁸⁵⁹ See Charles Tripp. *A History of Iraq* (Cambridge: Cambridge University Press, 2000), at 108-114.

⁸⁶⁰ Hansard, cxv 880 (1 April 1851).

⁸⁶¹ Capua, *supra*, ft. 854, at 164

⁸⁶² *Ibid*.

⁸⁶³ *Ibid*, at 171-172.

⁸⁶⁴ R.W. Kostal, *A Jurisprudence of Power: Victorian Empire and the Rule of Law*, (Oxford: OUP, 2005), at 10. Martial law was enforced in Barbados in 1805 and 1816, Damerara in 1823, Ceylon in 1848, Cephalonia in 1849, Cape of Good Hope in 1835, 1849-51, St Vincent in 1863, and in Jamaica in 1831-

in the colonial context with the aim of protecting British imperial interests and suppressing any form of resistance from the native population. The proclamation of martial law was therefore considered a common law right for the maintenance of ‘the safety of the colony’ as Robert Peel accentuated during the parliamentary debate on the uses of martial law in Ceylon in 1848.⁸⁶⁵ Any threat against the established colonial order was deemed to necessitate the use of martial law to bring back public order and ensure that the uncivilized natives remain obedient. The extremities of violence that would ensue during a period of martial law would always be justified, as passing this test of ‘necessity,’ for violent punishment or reprisal were *central techniques* to the practice of martial law.⁸⁶⁶

The codification of martial law into emergency codes was a corresponding part of colonial governance in the Empire. This institutionalization of martial law became more expansive as it was practically and widely applicable, for there was no need for the military to justify its actions under the common law test of strict necessity. As Brian Simpson has shown, it was in Ireland that Britain first decided to turn martial law into written law. Simpson considered the 1883 *Act for the More Effective Suppression of Local Disturbances and Dangerous Associations* in Ireland, as ‘the ancestor of the modern code of emergency law’.⁸⁶⁷ This Act, which gave the Lord-Lieutenant the power to declare a ‘state of emergency’ – suppress meetings, impose curfews, and try offenders by court martial. Most significantly, ‘nothing under the Act could be questioned by any court of law’.⁸⁶⁸ The Act was naturally aimed at crushing the Irish peasantry’s nationalist struggle. Ireland was therefore turned into a laboratory for experimentation on emergency law techniques that would later be exported to other parts of the Empire.⁸⁶⁹ By the First World War, the exclusive use of martial law in the colonies ended, and a ‘sharp break from the centuries old tradition of martial law occurred,’ when the drafting of more comprehensive and

2 and 1865. See Charles Townshend. “Martial Law: Legal and Administrative Problems of Civil Emergency in Britain and the Empire, 1800-1940,” *The Historical Journal*, 25, 1, (1982), at 168.

⁸⁶⁵ Quoted in Charles Fairman. “The Law of Martial Rule and the National Emergency,” *Harvard Law Review*, Vol. 55, (June, 1942), at 1260.

⁸⁶⁶ Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention*, (Oxford: OUP, 2001), at 62-63.

⁸⁶⁷ See the *Palestine (Defence) Orders of Council* of 1931 and 1937. 2 & 3 Government of Palestine Ordinances, Regulations, Rules, Orders and Notices 259 (19 April 1936 and 20 March 1937).

⁸⁶⁸ Simpson, *supra*, ft. 866, at 79.

⁸⁶⁹ Reynolds lists the pieces of legislation passed in Ireland that institutionalized emergency powers, and where ‘a notion of a permanent exception [was] developed’: The Crime and Outrage Act of 1847; Habeas Corpus Suspension Acts (1848-49, 1866-69); the Protection of Life and Property in Ireland of 1871; the Protection of Person and Property in Ireland of 1881; the Prevention of Crime (Ireland) Act of 1883 and finally the Restoration of Order (Ireland) Act of 1883. Reynolds, *supra*, ft. 851, at 13.

draconian emergency codes institutionalized emergency powers in Britain.⁸⁷⁰ Under a series of Defense of Realm Acts, the executive would make regulations, ‘for securing the public safety and the defense of the realm’.⁸⁷¹ This transformed ‘the executive into the legislature,’ giving it wide powers and allowing it to surpass parliament. The DORA technique would later be exported to India, where ‘emergency powers were [to become] a regular feature of the legal system’.⁸⁷² From there it was diffused into all corners of the Empire, including the Middle East (particularly Palestine) and eventually Iraq.

B. The normalization of emergency rule in Iraq

Martial law was already in use during the British administration of Iraq under the Mandate system. In fact, the subsidiary military agreement to the 1922 Anglo-Iraq Treaty, gave the British the right to compel the King to declare martial law and entrust its administration to a British officer.⁸⁷³ In other words, the administration of martial law was exercised by the British military rather than the Iraqi government. Moreover, as mentioned in a previous chapter, the 1922 Anglo-Iraq Treaty was itself only ratified in Parliament in 1924 when Percy Cox, the High Commissioner, used this right to proclaim martial law when the king fell ill. This is quite significant as I will argue, for one must understand the ‘independence’ of Iraq and its ensuing semi-peripheral sovereignty (as governed by the 1930 Anglo-Iraq Treaty) in relation to the performative functions of martial law and the doctrine of emergency. In other words, *semi-peripheral sovereignty and the doctrine of emergency came hand in hand. The Iraqi state needed martial law and emergency law to exercise its semi-colonial sovereignty. A weak sovereignty could only be (re)imposed over and over to be maintained and its hegemony held together, especially over its unsatisfied and distressed population.*

Even before the controversial 1943 amendment, the Iraqi constitution of 1925 already contained a provision – Article 120 – that gave power to the King to proclaim martial law. It stated that, ‘should disturbances occur, or should anything happen indicating the likelihood of the

⁸⁷⁰ Simpson, *supra*, ft. 866, at 80-81. See Oren Gross and Fionnuala Ni Aolain. *Law in Times of Crises: Emergency Powers in Theory and Practice*, (Cambridge: Cambridge University Press, 2006), at 182.

⁸⁷¹ *Ibid.*

⁸⁷² *Ibid.*, at 83.

⁸⁷³ Daniel Silverfarb. *Britain’s Informal Empire in the Middle East: A Case Study of Iraq 1929-1941* (Oxford: OUP, 1986), at 9.

occurrence of events of such a character in any part whatsoever of Iraq, or should there be a menace of hostile attack upon any part whatsoever of Iraq, the King shall have power...to proclaim martial law...'⁸⁷⁴ However, this power was subject to the Council of Ministers and martial law could only be proclaimed 'provisionally' in the districts of Iraq 'exposed to the danger of disturbances or attacks'.⁸⁷⁵ The Article goes on: 'the application of existing laws and regulations may be suspended by the proclamation declaring martial law in force,' and Parliament may pass a law exempting those charged with the execution of the proclamation.⁸⁷⁶ Finally, it states that, 'the method of administration of the places in which martial law has been declared to be in force shall be prescribed by Royal *Irda*' or ordinance.⁸⁷⁷ Therefore, despite having the ability to proclaim martial law, the proclamation was explicitly provisional and limited to 'a menace of hostile attack' implying internal or external threat to the state. This was significantly altered by the 1943 amendment with the addition of a much wider and flexible power to declare a state of emergency.

By 1935, *Ordinance for Martial Law Administration – No. 18* was passed, which detailed the manner in which martial law would be administered.⁸⁷⁸ The Military Court, for instance, was to be made up of a (military) president and four members (two military officers and two civilian judges). The procedures of the military court were detailed therein. The death penalty was the sentence to be applied to anyone who, 'uses arms against the government or its military and police forces'; 'participates in an armed rebellion against the government or armed forces'; disrupts the lines of communications; 'gives assistance to rebels'; 'spreads propaganda amongst members of the military or police forces'; or 'conducts espionage'. Penal servitude was the sentence for anyone, who 'gives [sensitive] news or information to rebels,' 'encourages the rebels to continue' their activities; or 'spreads false news'.⁸⁷⁹ Under this Ordinance, the Officer Commanding the Military forces had wide powers, including the imposition of curfews; conducting searches of persons and houses at any time of day; suspending or seizing newspapers and periodicals; preventing or dispersing a public meeting; and making arrests.⁸⁸⁰

⁸⁷⁴ *The Iraq Constitution (Organic Law)* – March 21, 1925, passed July 10, 1924, as amended July 29, 1925 and October 27, 1943.

⁸⁷⁵ *Ibid.*

⁸⁷⁶ *Ibid.*

⁸⁷⁷ *Ibid.*

⁸⁷⁸ 'Ordinance for Martial Law Administration – No. 18 of 1935'. *Iraq Gazette*, No. 1420, 14-5-1935.

⁸⁷⁹ *Ibid.*

⁸⁸⁰ An amendment to this law in 1936 (No. 38) stated that a law must be passed setting out how each district was to be administered under martial law. See Mustafa Kāmil. *Sharḥ al-Qānūn al-Idārī al-Iraqi* [A commentary on the administrative law of Iraq], (Baghdad: Matba' al-Najah, 1949), at 376.

The constitution was amended in 1943 to strengthen the prerogative powers of the King, one of which was the ability to dismiss the prime minister and dissolve parliament.⁸⁸¹ These major amendments emerged as a result of the 1941 anti-British coup of Rashid Ali, which threatened the existence of the monarchy and ultimately led to the second British occupation of Iraq that reinstated the preceding order.⁸⁸² The amendments were hence meant to ensure that such a coup against the monarchy would not reoccur. It did this by ensuring that the executive remained loyal to the monarchy and accordingly weakened the powers of parliament. Furthermore, it gave the King the authority to issue royal prerogatives that were upheld as law, when parliament was not in session, surpassing parliamentary scrutiny.

One of the most significant amendments was to Article 120, incorporating the power of the crown to declare a state of emergency if he felt the monarchy was under threat.⁸⁸³ The addition to the article read: ‘upon the occurrence of danger or rebellion or anything which disturbs the peace, in any part of Iraq, the King may, with the consent of the Council of Ministers, notify a state of emergency in the whole of Iraq, or in any part thereof. The districts affected by the notification shall be administered in accordance with a special law, which shall provide for trial, by Special Courts, of those who commit specified offences, and prescribe the administrative measures to be taken by specified authorities.’⁸⁸⁴

This amendment was inserted at the insistence of the British legal advisor to the Ministry of Justice, Edwin Drower, who was a member of the committee tasked with drafting the amendment.⁸⁸⁵ Drower argued that the proclamation of martial law was not enough by itself for the government to function effectively, especially since the proclamation of martial law could only be done within the narrow condition of wartime – i.e. if there ‘should there be a menace of [an external or internal] hostile attack’.⁸⁸⁶ In other words, in peacetime when this external or

⁸⁸¹ See al-Hasani. *Tārīkh al-Wizārāt*, Vol. 6, *supra*, ft. 235, at 121-142; for the details of the constitutional amendments.

⁸⁸² *The Iraq Constitution (Organic Law)* – March 21, 1925, passed July 10, 1924, as amended July 29, 1925 and October 27, 1943.

⁸⁸³ *Ibid.*

⁸⁸⁴ *Ibid.*

⁸⁸⁵ Kāmil Chādirjī. ‘Sin Qānūn al-Tawār’ Yastabqī al-Mamlīka fī Hāla Ahkām ‘Irfīya Dā’īma’ [‘The Emergency Law Ensures that the Monarchy will remain in a Permanent State of Emergency’], *Sadā al-Ahālī*, 3/1/1951; included in Rif‘at Chādirjī. *fī Haq Mumārasa al-Sīyāsa wa al-Dīmuqrāṭīya: Iftitāhāt Jarīda al-Ahālī, 1944-1954* [The right to pursue politics and democracy: the openings of *al-Ahālī* newspaper, 1944-1954], (Koln: al-Jamal, 2003), at 436.

⁸⁸⁶ *Ibid.*, at 437

internal threat was not present or unclear, the government would not have a justification for the proclamation of martial law. What was required was a legal justification for the proclamation of an emergency, and so Drower insisted that this could only be done by inserting such a power into the constitution itself – that is by constitutionalizing the executive power to declare a state of emergency. The majority in the drafting committee were strongly opposed to this suggestion, but despite this Nūrī al-Saīd forcefully inserted this article into the list of amendments ensuring it would be passed.⁸⁸⁷ As Kāmil al-Chādirjī argued in *Sadā al-Ahāli* newspaper, the vagueness of the phrase, ‘danger or rebellion or anything which disturbs the peace’ ensured that a state of emergency could be declared in peacetime, and did not have to be provisional as with the proclamation of martial law in the first part of the Article. That is, it could become a permanent state of emergency,⁸⁸⁸ which was in fact exactly what transpired, in particular after the *Intifāda* of 1952 and later the Basra General Strike of 1953.

C. The *Intifāda* of November 1952: the introduction of emergency as a governing technique

Before moving to an analysis of the doctrine of emergency in Iraq, I will very briefly shift this narrative to the streets by recounting the events of the *Intifāda*, which once again brought military rule back to the fore. Some major events at the time shook the entire region and of course had a major impact on Iraqis; in particular only a few months earlier, the Egyptian Revolution instigated by the free Officers overthrew the British-sponsored monarchy there, while a movement for the nationalization of oil in Iran was underway. The *Intifāda* of November 1952 could be considered as the ‘continuation’ of the *Wathba*, which will be dealt with in the next chapter, as it was an attempt to revive the vitality of that emancipatory event. The nationalist movement and especially the opposition parties became aware that without a properly organized and unified flank, they would fail to bring any real change to an order that was increasingly intransigent.

It was this understanding that led the parliamentary opposition (the Independents, the National Democrats, the United Popular Front), and the communist-dominated Peace Partisans to negotiate an organized ‘Contact Committee’, with the aim of ‘facilitating the exchange of views and ensuring uniformity of action.’⁸⁸⁹ On October 28, the opposition sent petitions to the Regent

⁸⁸⁷ *Ibid*, at 438.

⁸⁸⁸ *Ibid*, at 440.

⁸⁸⁹ Batatu, *supra*, ft. 41, at 667.

that called for the following: the amendment of the constitution ‘to safeguard the sovereignty of the people’ by abolishing the power of the crown to dismiss cabinets, the granting of civil liberties and instituting a direct electoral system. The National Democrats and the Independents went further calling for the abrogation of the 1930 Anglo-Iraq Treaty, the eviction of all British forces, and a limit to landownership.⁸⁹⁰ Other significant demands included the end to all ‘reactionary laws’, (a clear reference to the TCCDR and emergency law), the abolition of feudalism and the freedom to form trade unions.⁸⁹¹ The Regents response was that reforms could only be enacted in a ‘constitutional’ manner, that is through Parliament and the responsible government in office.⁸⁹² The opposition consequently decided to boycott the coming elections, which led the British Ambassador, Sir John Troutbeck, to refer to them in his dispatch as a ‘band of gangsters’ that must be ‘hit hard’.⁸⁹³

On November 22, demonstrations erupted in Baghdad as students, workers, and street vendors sprang to action under the guidance of the newly formed committee.⁸⁹⁴ The shouts against the Regent were numerous but more significant were the slogans: ‘Anglo-American Imperialists Leave our Country!’⁸⁹⁵, and ‘O Allah, O People! Renew the Wathba!’⁸⁹⁶ Crowds clashed with armed police, who fired shots, leading to the killing of one person, while fifty-two others, including thirty-eight policemen were injured.⁸⁹⁷ On 23 November, the demonstrations intensified its organizational capacity and quickly broadened, assuming ‘a more distinct plebeian aspect’.⁸⁹⁸ The ICP who at that point dominated the rhythm of the streets, led the multitudes the next morning with the slogan, ‘We Want Bread not Bullets!’ eventually stormed the Qambār Alī police station.⁸⁹⁹ The anger intensified when in the afternoon the United States Information Service library was burned, while another police station was occupied and set ablaze.⁹⁰⁰ The poet

⁸⁹⁰ For the full transcripts of the petitions see: Sir J. Troutbeck to Mr. Eden, 5 November, 1952, ‘Recent Developments in the Political Situation in Iraq’, EQ 1016/39, FO 371/98735.

⁸⁹¹ *Ibid.* The Independence party’s petition referred to the parliamentary system in Iraq as a ‘fiction’ because of the power of the crown to dismiss parliament and cabinets.

⁸⁹² *Ibid.*

⁸⁹³ TNA. Troutbeck to FO, London, 14, November 1952, EQ1016/46, FO 371/98735.

⁸⁹⁴ Batatu, *supra*, ft. 41, at 668.

⁸⁹⁵ *Ibid.*

⁸⁹⁶ Baha’ al-Dīn Nurī, *Muthākarāt Baha’ al-Dīn Nurī* [the memoirs of Baha’ al-Dīn Nurī], (London: Dār al-Hikmā, 2001), at 164.

⁸⁹⁷ Batatu, *supra*, ft. 41, at 668.

⁸⁹⁸ *Ibid.*

⁸⁹⁹ Batatu, *supra*, ft. 41, at 669.

⁹⁰⁰ Baha’ al-Dīn Nurī, the Secretary General of the ICP at the time recounts the events of the *Intifada* in his memoirs and states that the demonstrators were not a mob, but rather well-organized and peaceful, and that although there were two fires, these only occurred when the police violently

Badr Shākir al-Sayyāb would later describe the scene: ‘they burned and looted and destroyed, as if they were destroying colonialism itself and not tape recorders and burning exploitation rather than cinema reels’.⁹⁰¹ The violence spiraled even further when after police gunfire brought death to several demonstrators, in an act of vengeance; a policeman was dragged by a mob and set a light.

By sundown, the army was called into the streets of Baghdad for the first time in its modern history. Tanks rolled into the squares of the city. A special session was held in parliament where it was decided that martial law would be proclaimed in Baghdad Governante under Article 120 of the Constitution.⁹⁰² The application of ordinary laws ceased, and the civil courts shut down. General Nurī-ud-Dīn Mahmūd, a loyal Royalist officer of Kurdish origin, was given wide powers to form a new government and rule under military administration. Referring to the provisions of 1935 *Ordinance for Martial Law Administration – No. 18*, General Mahmūd issued decrees that prohibited further demonstrations, dissolved all political parties, arresting their leaders, suppressed the press, and imposed curfew.⁹⁰³ Despite these measures, demonstrations did not cease until they were violently crushed when military forces were ordered to shoot into the crowd.⁹⁰⁴ Military rule lasted for 318 days until direct elections were called and a civilian government was formed, but the state of emergency remained in place.

The *Intifāda* was crushed even more violently than the *Wathba* before it but similarly with the use of the weapon of martial law. The process of normalizing the state of emergency in law now started to materially take pace and reveal itself into the everyday lives of Iraqis. The doctrine of emergency was clearly a technique of governance, and I would go so far as to argue that it was an integral part of the structures of the semi-colonial state. I will get to this argument in due course, but for now it is important to mention that if one read through the parliamentary records of this period, one would be astounded to find heated debates not only on the constitutionality of martial law, but the semi-colonial character of the Iraqi state. The parliamentary opposition openly attacked the government and the British, referring to the Iraqi

attacked the demonstrators, who were only armed with sticks and stones. See Nurī, *supra*, ft. 896, at 170-171.

⁹⁰¹ Badir Shākir al-Sayyāb, *Kuntū Shū‘īyan* [I was a communist], (Cologne: Manshūrāt al-Jamal, 2007), at 204-9.

⁹⁰² al-Hasanī, Vol. 8, ft. 235, at 319.

⁹⁰³ *Ibid*, at 321-322.

⁹⁰⁴ *Ibid*, at 323.

state as a dictatorship disguised as a parliamentary democracy. It considered the prolonging of martial law and states of emergency as being unconstitutional.

What is more, the opposition was in some way cognizant of the uses of emergency doctrine as a technique of governance. So, for instance, the foremost social democrat, Mohammed Hadīd claimed that the government could not govern or even survive without their uses of martial law.⁹⁰⁵ Hadīd emphasized that martial law was merely used to ‘protect the ruling classes’, turning Iraq into a ‘police state’.⁹⁰⁶ Hussein Jamīl, Hadīd’s colleague, made a similar point when he wrote in *Sawt al-Ahālī* that the government used martial law ‘to protect its back’ whenever it needed to.⁹⁰⁷ In one parliamentary session, Fā’iq al-Sāmūrā’ī of the (right-wing) nationalist Independents stated that, ‘ever since Iraq became a member of the League of Nations until now, it has been ruled by martial law’ and that we have forgotten what ‘ordinary conditions’ look like and have become ‘accustomed to this type of rule’.⁹⁰⁸ This was not an exaggeration as I have shown earlier. In fact, only six months earlier, Nurī al-Saīd was endeavoring to pass another emergency law through parliament that would bring about such normalization of emergency before elections took place. This law would be ‘less restrictive than martial law’ and would allow civil courts to ‘continue to function’ in a state of emergency.⁹⁰⁹ This sort of normalization was in fact what would emerge as the next elections occurred when a state of emergency was still in place to the advantage of al-Saīd’s Constitutional Union Party⁹¹⁰ and the ruling class.⁹¹¹

⁹⁰⁵ *Muhāthir Majlis al-Nūwwāb*, (3-5-1949) [Iraqi Parliamentary Records], at 481-482.

⁹⁰⁶ *Ibid.*

⁹⁰⁷ Hussein Jamīl, “al-Ahkām al-‘Rfīya wa Atharuha fī Idtrāb al-Hayāt al-‘Āma”, *Sawt al-Ahālī*, 9-10-1949.

⁹⁰⁸ *Muhāthir Majlis al-Nūwwāb*, (19-12-1948) [Iraqi Parliamentary Records], at 73.

⁹⁰⁹ TNA. T.E. Bromisy to Eastern Department, FO; 27 March 1952. E Q1016/10. FO/371/98734.

⁹¹⁰ It was surely no coincidence that al-Saīd chose this name for his new party as he was adamant on asserting the constitutionality of his actions – something that I would consider as a characteristic of the semi-colonial state in general.

⁹¹¹ This led one parliamentarian to condemn al-Saīd’s tactics in forming a majority for his party while martial law was in place – i.e. while all opposition parties were suspended. ‘Abdul Jabbār al-Jumarid argued that al-Saīd’s parliamentary ‘majority’ was formed using ‘dictatorial methods’. This furthers the argument here that the doctrine of emergency was a technique of governance. See *Muhāthir Majlis al-Nūwwāb*, 21st Session 1952-53, at 352.

D. The Rule of Semi-Colonial Law: Hussein Jamīl & the ‘legal aporia’ of emergency

I will now turn to the work of Hussein Jamīl, a social democrat and opposition MP, lawyer and a brilliant legal scholar, who was one of the foremost critics of the uses of martial law in Iraq.⁹¹² He wrote extensively on the topic and in 1953 published a pamphlet entitled *Martial Law: A Doctrinal Analysis*.⁹¹³ His overall argument was that martial law (and the doctrine of emergency) did not suspend the law, but rather was governed by the Iraqi constitution and therefore must be constrained by clearly identified parameters. In other words, he identified martial law as being rooted in law and therefore could not (legally) override the fundamental constitutional rights of the Iraqi people.⁹¹⁴ Martial law, he wrote, ‘although provisional, is still not an absolute order, but rather is subject to the law... [as] the constitution being its source... it must be supervised by the judiciary’.⁹¹⁵ Jamīl considered the proclamation of a state of emergency under Article 120 as creating a ‘political legal order that is based on constitutional rule, by reference to the constitution,’ and ‘within the limits of the law’.⁹¹⁶ Not only was Jamīl an advocate of subjecting the military courts to appeals after the state of emergency ended, which would determine the constitutionality of its rulings, he also strongly criticized the composition of

⁹¹² Hussein Jamīl (1908-2002) born in Karbala in 1908, where his father was a judge. He moved to Baghdad for secondary education, and eventually attended the law college in Damascus, graduating in 1930. Jamīl was one of the founders of the reputable social democratic *al-Ahālī* newspaper, and he was a leader of the National Democratic Party, which was founded in 1946. He was elected to parliament in 1947, 1948 and 1954, and worked for the Ministry of Justice in 1949-1950. He became the head of the drafting committee of the Iraqi constitution after the July revolution of 1958. A prominent member of the Iraqi Lawyers’ Union between 1953-1957, he served as secretary-general of the Arab Lawyers Union between 1956-1958. He died in Baghdad in 6 January 2002.

⁹¹³ Hussein Jamīl. *al-Aḥkām al-‘Irḑīya: Baḥīth Fiqhī* [Martial Law: A Doctrinal Analysis], (Baghdad: Matba‘a al-‘Anī, 1953).

⁹¹⁴ *Ibid*, at 3, 11. Here reference should be made to Article 7 of the constitution (“There should be no violation of, or interference with, the personal liberty of any of the inhabitants of Iraq. None of them shall be arrested, detained, punished or obliged to change their place of residence, or to be placed in bonds, or compelled to serve in the armed forces, except in conformity with law. Torture and the deportation of Iraqis from the Kingdom of Iraq are absolutely forbidden”); and Article 12 (“Freedom of expression of opinion, liberty of publication, of meeting together, and of forming and joining associations is guaranteed to all Iraqis within such limits as prescribed by law.”), as examples Jamil refers to of the constitutional rights that were violated by martial law and the military courts.

⁹¹⁵ See Abdul Hussein al-Sha‘bān. *Jithūr al-Tayyār al-Dimuqrātī fi al-‘Iraq: Qira‘a fi afkār Hussein Jamīl*, [The Roots of the Democratic Current in Iraq: A study in the thought of Hussein Jamil], (Beirut: Bīsān, 2007), at 210.

⁹¹⁶ Jamīl, *supra*, ft. 913, at 11.

the military courts that had a majority of military rather than civilian judges as contravening the constitution.⁹¹⁷

Jamīl, was a social democrat of a liberal (Fabian) variety and so he had a strong affinity to the notion of the rule of law.⁹¹⁸ He referred to the Magna Carta and the writ of *habeas corpus* in his pamphlet to emphasize the principles inherent in the Iraqi Constitution that all citizens have a right to be heard by the ordinary (civil) courts of the land.⁹¹⁹ Furthermore, he argued that the ordinances issued by the military administrators during a state of emergency do not have the authority of law and cannot remain valid after a state of emergency ends, which was what often happened in Iraq.⁹²⁰ In that sense, Jamīl believed that a clearly defined limitation to a proclamation of martial law and a state of emergency would prevent injustices from occurring.⁹²¹

Despite his sophisticated legal analysis, Jamīl was limited to a narrow doctrinal analysis, presenting a legal solution to a non-legal problem. In other words, he refused to grasp the doctrine of emergency beyond a narrow legal lens by studying it from a historical lens and grasping its function as a social and political technique of governance in a semi-colonial context. The question of martial law in Iraq was not a question of legal or constitutional interpretation.⁹²² The semi-colonial state may be obsessed with its constitutionality, but that was merely a façade for its real intentions – the maintenance of its hegemony and the crushing of anything that would threaten its order. Jamīl thought that the ideal of the rule of law would solve the problem of martial law in Iraq.⁹²³ However, he did not realize that martial law and the doctrine of emergency had a specific function in the colonies and semi-colonies. Jamīl underscores more than once in his pamphlet that, ‘it is not the purpose of martial law to create a dictatorial order in a country which

⁹¹⁷*Ibid.* See Hussein Jamīl, ‘al-Aḥkām al-‘irfiya wa Athāruhā fī Idirāb al-ḥayāt al-‘Āma’ [Martial law and its effects on public life], *Sawt al-Aḥālī* 9-10-1949.

⁹¹⁸ One of his books, *Huqūq al-Insān wa al-Qānūn al-Jināī* [Human Rights and the Criminal Law], (Ma’had al-Bihūth wa al-Dirāsāt al-‘Arabiya, 1972), published in 1972, contained an epigraph by John Locke on its cover, “Where-ever law ends, tyranny begins”.

⁹¹⁹ Jamīl, *supra*, ft. 909, at 10.

⁹²⁰ *Ibid.*, at 33-34.

⁹²¹ Jamīl refers to some of these injustices in his pamphlet, illustrating how the military judges would take on cases that occurred before the date of the proclamation of martial law; while in some cases extend its jurisdiction to an area that was not under martial law just for the convenience of constructing the legal prerequisites for a crime. *Ibid.*, at 22.

⁹²² Although the clarification of how law should be applied was important for the masses and that was his purpose in writing this pamphlet.

⁹²³ This was also the argument the National Democratic Party that Jamīl belonged to, who argued that the manner in which General Nuri used martial law to suspend political parties was unconstitutional. See al-Hasanī, *Tārīkh al-Wizārāt*, Vol 8, *supra*, ft. 235, at 348.

is a democracy.’⁹²⁴ However, *this was exactly the (performative) function of martial law for the semi-colonial Iraqi state if one looked at its effects on the ground* – the maintenance of a semi-colonial order, whether it was dictatorial or even democratic was not an issue.

If one approached martial law as actually being governed by the rule of law of a genuine parliamentary democracy, then Jamīl’s analysis might arguably have some weight.⁹²⁵ In Iraq, however, martial law had a very specific function and Jamīl was merely describing what in his view *should be (in law) rather than what was the semi-colonial reality*. An important example of how the doctrine of emergency was used as a technique of governance occurred during the massive Basra General Strike of 1953,⁹²⁶ propelled on the first anniversary of the *Intifāda*, it was organized under the guidance of a Strike Committee, which was led by the renowned Iraqi communist Salām Ādil.⁹²⁷ The oil workers of the Basra Petroleum Company went on strike and eventually workers of the entire city joined the strike, including the port workers. The government at the insistence of the Minister of Interior, Saīd al-Qazzāz, decided that the proclamation of a state of emergency under the guise of ‘combating communism’ and reinstating ‘law and order’ was necessary.⁹²⁸ Police were ordered to violently shoot into a crowd of striking workers, while newspapers that spread the strikers’ declarations were suppressed and their journalists arrested.⁹²⁹

⁹²⁴ Jamīl, *supra*, ft. 913, at 3.

⁹²⁵ Even then there are reservations; for one thing, it is not possible to be so clear as to cover all emergency situations. As Alexander Hamilton wrote, it is impossible ‘to foresee or to define the extent an variety of national exigencies, and the correspondent extent and variety of means which may be necessary to satisfy them. The circumstances that endanger the safety of nations are infinite.’ This is why most constitutional emergency provisions are in fact broad and flexible as opposed to Jamīl’s point. See Oren Gross and Fionnuala Ni Aolain. *Law in Times of Crises*, *supra*, at 66.

⁹²⁶ Su’ād Khayrī considered this strike as ‘the Wathba of the workers’ as it contributed to the ‘economic liberation of oil resources from imperial hands’. Khayrī, *supra*, ft. 562, at 204.

⁹²⁷ Husain al-Radī, aka Salām Ādil (b.1924, Najaf – d. 24 Feb 1963); Ādil was a schoolteacher and poet, who rose to become a member of the Central Committee of the ICP in 1953. He represented Iraq in the Second London Conference of the Communist Parties with the Sphere of British Imperialism the same year. He was heavily involved in the struggles of the labour movement in Basra and especially the oil workers. He died under torture by the Ba’athists during Black February in 1963. Batatu, *supra*, at 712-717. For his biography See Thamīna Nājī Yūsuf and Nizār Khālid. *Salām Ādil: Sīra Mūnādil* [Salam Adil: The Story of a Struggler] (Damascus: Dār al-Madā, 2001).

⁹²⁸ See Abdul Rahmān al-Bayātī. *Saīd al-Qazzāz wa Dourihu fi Sīyāsa al-‘Iraq* [Said al-Qazzaz and his role in Iraqi politics], Beirut: Mu’asasa al- ‘Arabīya lil-Dirāsa wa al-Nashir, 2001), at 92-102.

⁹²⁹ ‘Azīz Sbāhī. *Uqūd Min Tārīkh al-ḥizb al-Shīw‘ī al-‘Iraqi, al-Juzu’ al-Thāni* [Decades from the History of the Communist Party of Iraq, volume 2], (Damascus: Manshourāt al-Thaqāfa al-Jadīda, 2003), at 125-127.

A massive public outcry ensued against these violent measures and the use of emergency law against the working class. Only several months earlier one elder statesman, Mohammed Ridhā al-Shabībī made the argument in parliament that the government was using this technique to institute *hikūm tabaqī* ('class rule').⁹³⁰ In a sense, this was true, for the use of emergency rule to deal with economic and labour relations was unprecedented in scale, and certainly revealed a unique classist dimension – its use by the ruling-class to violently crush the stirring momentum of the working class movement. In the end, however, it illustrates exactly how a semi-colonial state functions in its governing capacity. Ironically, Jamīl was not unaware of this, for he wrote an article in the *Sawt al-Ahālī* newspaper condemning what transpired in Basra and stressed that this technique had become 'the normal response to the everyday affairs of the people'; will an emergency be proclaimed, he continued, 'every time a strike occurs...and...every time workers demand their rights?'⁹³¹ The rule of law therefore that he claimed could (in theory) constrict a state of emergency in his pamphlet was rather useless in doing so in reality. The doctrine of emergency was more a Pandora's box that was impossible to constrain by the law.

In any case, the fact was that the Iraqi constitution and the legal structures of the Iraqi state, including its semi-peripheral sovereignty was the product of British [treaty and mandate] semi-colonialism and imperialism. One could refer to the impassioned speech in parliament by opposition MP 'Abdul Razzāq al-Shaikhī as a case in point. al-Shaikhī infuriated the Speaker and others by arguing that it was in fact the constitution itself that 'denied the rights of the people,' as it was put into place by the British.⁹³² He pointed out that the government was democratic and nationalist only in appearance, while in reality it was pieces of a 'wooden prop, which the...colonizer hides behind...,' manipulating it out of view.⁹³³ It was the 'colonizer', he continued, who manufactured Iraq's independence, which he compared to the idols of pre-Islamic *Jāhiliyya* that were made of mud. Referring to the constitutional rights of the Iraqi people, he emphasized that they were given by the government 'with its right hand and taken with the left', as the permanent state of emergency illustrates that Iraq was in fact a 'dictatorship in its [very] eye [i.e. in its essence], even if they tell us we live in a democracy'.⁹³⁴ al-Shaikhī suggested the redrafting of the entire constitution and the establishment of a nationalist government that truly served the people rather than the British –i.e. *the end of the semi-colonialism and its legal*

⁹³⁰ *Muhāthir Majlis al-Nūwwāb*, 23rd Session of the years 1952-53, (11-5-1953), at 389.

⁹³¹ *Ṣawt al-Ahālī*, 20-12-1953.

⁹³² *Muhāthir Majlis al-Nūwwāb*, supra, 15-03-1953, at 54.

⁹³³ *Ibid.*

⁹³⁴ *Ibid.*, at 55.

manifestations – in a word, an end to imperialism in Iraq. This, he said, was the ‘first step for the path to a truly democratic rule and towards liberation from the bonds of treaties and unjust agreements’ and it was the only way to end this interminable conflict between the government and the people.⁹³⁵

Putting al-Shaikhli and Jamil into conversation, the limitations of the latter’s analysis becomes clear. Of course, Jamil admits that the constitution was the product of the British Mandate, but he claims to defend the actual *ideals* of the constitution and the rule of law, *as it should be*.⁹³⁶ This was how much he believed in the ideal of the rule of law. This, however, did not change the fact that he regarded that there was a centrality to resolving the ‘legal aporia’ of martial law. That is, that emergency could somehow be constrained even if the structures of semi-colonialism remained intact. However, my argument is that the violence of martial law could not be constrained by the rule of law per se, especially in a colonial and semi-colonial context. It was after all a manifestation of the semi-colonial Iraqi state. al-Shaikhli’s speech exposed this fact, for *the mere reform of law in itself would not bring real democratic change in Iraq*.

Stephen Morton has emphasized that one needs to distinguish between the violence of colonial sovereignty and martial law/emergency, as the ‘legal aporia of emergency’ is merely a ‘colonial fiction’ for the colonized, who experiences violence regardless in his or her everyday life.⁹³⁷ In other words, the issue for the colonized is not that of martial law or emergency per se nor its legality or constitutionality, but rather the structures of (semi-)colonialism and -political and economic- sovereignty as a whole. The violence of emergency –and the ‘state of exception’ – is in this way already ingrained within (semi-)colonial sovereignty or rather (semi-)colonial sovereignty precedes the normalization of the state of emergency.

We could go further and argue that the legal structures of emergency became even more important as a technique of governance in the semi-colonial state. Instead of being a mere ‘political strategy’ or even a ‘tool of political management,’ as was the case in the British

⁹³⁵ *Ibid.* The president and speaker of parliament was infuriated with al-Shaikhli’s speech that he nearly held him in contempt of parliament for breaking his oath of upholding the constitution, stating that he ‘crossed the line’ with his insulting tone towards the constitution.

⁹³⁶ Jamil, *supra*, ft. 913, at 10.

⁹³⁷ Stephen Morton, *States of Emergency: Colonialism, Literature and Law*, (Liverpool: Liverpool University Press, 2003), at 9.

response in its colonies, such as Malaya, Kenya and Cyprus,⁹³⁸ emergency became more legally entrenched into the very structures of the semi-colonial state, which needed it to survive. The semi-colonial Iraqi state *relied on* martial law and the doctrine of emergency to preserve itself, while it remained obsessed with its own legitimacy and the constitutionality of its actions. As the late Nasser Hussein has revealed, ‘martial law [in the colony] seeks to effect not just the restoration of order, but the restoration of the general authority of the state. In doing so, it takes advantage of the absence of normative constraints on power not just to punish more...but to punish out of a different logic.’⁹³⁹ It is, in other words, he writes, ‘what is needed to construct the state all over again...[i.e.] the condition for the possibility of law’s existence’.⁹⁴⁰

It was consequently these (pre-)conditions of the semi-colonial order which were the target of the counter-hegemonic movements rather than the actual interpretation of law. The semi-colonial Iraqi state continuously used the doctrine of emergency to fracture the possibilities of the emergence of an alternative counter-hegemonic alternative space. Every time such a space sought to emerge, it was swiftly and violently suppressed. Hence, one could see the limitations of Jamīl’s legal idealism, which implied that the struggle between the people and the regime was more concerning law or its interpretation. As if the demonstrators evoked the rule of law (in their minds) in such a manner every time they took the streets, and that this was what produced these revolutionary spaces.

This, however, was not the case. Firstly, what the masses were calling for with *their very actions* (whether during the *Wathba* or later the *Intifāda*) was a *new social and legal order* – and therefore a novel conception of law *or* what Gramsci referred to as a new ‘usage’ of the law. One that was free from semi-colonialism and imperialism. Secondly, the conditions for these counter-hegemonic spaces emerged because of several intersecting local, regional and international factors and not (solely) because of the pluralistic uses of law by the movement. This analysis will become clearer when I closely examine the emergence of the spaces whereby these struggles occurred – namely when I provide what I refer to as a ‘conjunctural’ analysis of the *Wathba* uprising. In this chapter, I have shown the (legal) methods used by the Iraqi state to *fracture* the materiality of any potentially revolutionary space so as to re-impose its own hegemonic space and

⁹³⁸ Frank Furedi. “Creating a Breathing Space: The Political Management of Colonial Emergencies,” in Robert Holland (ed.) *Emergencies and Disorder in the European Empires after 1945*, (London: Frank Cass, 1994), at 94.

⁹³⁹ Nasser Hussein. *The Jurisprudence of Emergency: Colonialism and the Rule of Law*, (Ann Arbor: University of Michigan Press, 2003), at 124.

⁹⁴⁰ *Ibid.*

order. In the next chapter, I will examine the brief counter-hegemonic and revolutionary space that emerged during the *Wathba* and analyze its consequences.

IV. Conclusion

This chapter detailed the uses of criminal law and martial law in Iraq before the revolution. The Iraqi state and the ruling class used the law to violently crush opposition and safeguard its hegemony. I began by detailing the manner in which the *Baghdad Penal Code* was amended in 1938, basically making it a crime to be a ‘communist’ or even a progressive reformist. This was one of the harshest laws in the region. Moreover, the military courts found it very useful in sentencing thousands of Iraqis, including the leaders of the communist party. The fact was that martial law and criminal law came hand in hand as the latter was more effective in a state of emergency.

In the second part of this chapter, I trace the history of martial law and emergency doctrine and illustrate its uses in the colonies. I then make the argument that its uses in Iraq (especially after the *Intifāda*) had a specific performative function as it allowed the semi-colonial Iraqi state to reestablish itself and its hegemony. It was therefore a technique of governance that ensured that the fragmented and weak semi-peripheral sovereignty does not falter. This was clear in how it was used to deal with labour strikes, such as the Basra General Strike of 1953. My critique of the liberal views of Hussein Jamīl show that the law could not constrain the ‘magically’ expansive power of the doctrine of emergency as it was only by ending its root cause – the semi-colonial conditions in place that the permanent state of emergency could finally come to an end. Returning to Benjamin’s quotation in the epigraph above, it is only by seeing things from the perspective (or tradition) of the *colonial* ‘oppressed’ could one grasp how permanent emergency emerges in the everyday materiality of life. One could add, that this ‘tradition’ also teaches us that just because the ‘emergency situation’ becomes the ‘rule,’ does not entail that it could be constrained by their (legal) parameters.

Chapter 7: The Defeat of the ‘Covenant of the Slave’: *al-Wathba* as an Anti-Colonial Conjecture Against International Law

O Portsmouth Covenant, we as a nation
Reject an alliance with the traitorous enemy
Stay at your border, for Iraq possesses
Tremendous volition to crush any reckless fool.⁹⁴¹

~ Mohammad Sālih Bāḥr al-‘Ūlūm

[*al-Wathba*,] a miracle? No, it was no miracle! If it were not, that would be the miracle.⁹⁴²

~ Khālīd Bakdāsh

It would be apt for the Iraqi people...to take advantage of the critical [geopolitical and strategic] *location* of their country to save themselves from the scourge of colonialism and to remember always and forever that their salvation is dependent on the *unity* of all peoples of *al-Sharq* [the East] and the defeat of colonialism in *all* Eastern countries.⁹⁴³

~ ‘Abdul Fatāh Ibrāhīm

I. Introduction

During the third session of the United Nations General Assembly held in Paris in 1948, the delegate for the Philippines, Carlos Romula, insisted on a broad interpretation of the ambiguous Chapter XI of the UN Charter, stressing that ‘the force of history which had brought about many changes in the British Empire was far stronger than legal or constitutional barriers’.⁹⁴⁴ Romula was directly referring to what he called the ‘impetus of revolutionary forces’ that was bringing about transformations on the ground in the Third World, to make a legal argument.⁹⁴⁵ This ‘non-juridical’ approach, which was used extensively by the ‘Afro-Asian bloc’

⁹⁴¹ Muhammad Sālih Bāḥr al-‘Ūlūm, *Diwan Bāḥr al-‘Ūlūm*, (Baghdad: Matb‘a Dar al-Tadāmūn, 1968), 2:129.

⁹⁴² Khālīd Bakdāsh (the prominent Syrian communist leader) in *al-Tarīq*, as quoted in Sbāhī, ‘*Ūqūd* (1), *supra*, ft. 191, at 345.

⁹⁴³ Ibrāhīm, *supra*, ft. 492, at 238, my emphasis.

⁹⁴⁴ Quoted in El-Ayouty, *The United Nations and Decolonization: The Role of Afro-Asia*, (The Hague: Martinus Nijhoff, 1971), at 35.

⁹⁴⁵ *Ibid*, at 34.

in the UN, demonstrates that the anti-colonial and anti-imperial struggles unleashed by Third World peoples at the time could not be ignored and had direct implications on international law and its interpretation.

In this final chapter, the *Wathba* will be analyzed as a moment where all the seemingly confined labour struggles recounted earlier culminated into a much wider nationalist and internationalist anti-colonial arena. This chapter is concerned with the question of the revolutionary agency within international legal scholarship relating to the Third World. I will address certain limitations in the methodology and analysis of the Third World Approaches to International Law (TWAIL) scholarship by detailing an event of mass working-class agency in the historiography of anti-colonial and anti-imperial struggle in Iraq, situating it broadly within the international conjuncture of decolonization. The *Wathba* of 1948 was a great popular uprising of the Iraqi urban poor and working classes that successfully prevented the imposition of a revised unequal treaty between Iraq and Britain (the Anglo-Iraq Treaty), sparking the revolutionary process that would eventually overthrow the British-sponsored monarchy a decade later. The *Wathba* will be shown to be one historical manifestation of a wider conjuncture against international law in the Third World. I will argue that TWAIL must begin undertaking the study of the conjunctures that allowed certain movements ample room to act within counter-hegemonic spaces and maneuver against the structures of imperialism of international law. It is only through such an examination that the present conjuncture can be understood and the future transformed.

II. The limitations of the study of revolutionary agency in TWAIL analysis

TWAIL scholars have been at the forefront of exposing how colonialism and imperialism are constitutive of the history and discipline of international law.⁹⁴⁶ They have done so by reverting to an examination of history to expose the legacy of imperialism in international law. In fact, it is this particular method of historical analysis that has been said to be ‘the feature most fundamental’ to TWAIL scholarship;⁹⁴⁷ one which regards ‘historical perspective’ as the ‘key technique’ in understanding the current features of international law.⁹⁴⁸ TWAIL encompasses a

⁹⁴⁶ For a good overview of the literature see Gathii, *supra*, ft. 351.

⁹⁴⁷ Karin Mickelson. “Rhetoric and Rage: Third World Voices in International Legal Discourse,” *Wisconsin International Law Journal*, 16, No. 2, (1998): 406.

⁹⁴⁸ Obiora Okafor. “Newness, Imperialism and International Legal Reform in our Time: a TWAIL perspective,” *Osgoode Hall Law Journal*, 43, No.1&2, (2005): 178.

political commitment to counter traditional approaches that have disregarded the colonial past and considered it of trivial concern to international law. Moreover, international law as a discipline through its positivist predisposition tends to repress this colonial past, constructing and reproducing the version of the past that is better suited for its hegemonic discourse.⁹⁴⁹ TWAIL analysis resists this process, and aims to expose the hidden colonial origins of international law, and most importantly, emphasizes the *continuity* of ‘colonial relations’ in the contemporary structures of international law.⁹⁵⁰

Despite this radical commitment of the TWAIL analysis, there still appears to be considerable limitations to it. This is primarily due to the manner in which TWAIL scholars often approach the question of agency in their analysis. As Owen Taylor has argued, TWAIL scholars tend to invoke notions of ‘resistance’ (the word most often used to evoke agency) that are highly selective of the conceptual history of revolution.⁹⁵¹ In other words, when TWAIL scholarship turns from an analysis of the structures of imperialism within international law to address the issue of agency, it does so in a highly idealized manner that locates the agency of social movements within a narrative of ‘resistance’ as a ‘re-conceptualization [of law] as an act of will’, while emphasizing the necessity of ‘radical legal pluralism’ as fundamental to emancipation.⁹⁵² Balakrishnan Rajagopal, for example, takes such a position in situating the revolutionary potential of social movements in ‘non-institutional, non-party, and cultural terms’.⁹⁵³ This narrow conception suggests that as long as revolutionary agency or resistance is ‘sanitized’ (i.e. spontaneous, without central or party organization, and non-violent), then it would bring about true political and democratic change *within* the liberal promise of international law, whatever the state of the structures in question.⁹⁵⁴

The problem with this approach is that it assumes that law is abstract and can be re-conceptualized into an emancipatory plural form, rather than *already* entrenched (and so constrained) within certain material social conditions and forms. What this also does is ignore the *connection* between agency and structure – i.e. the *conjuncture*, leading to a fanciful situation

⁹⁴⁹Anghie, Anthony. “The Evolution of International Law: colonial and postcolonial realities,” *Third World Quarterly*, Vol. 27, (2008): 739-753.

⁹⁵⁰*Ibid.*

⁹⁵¹Owen Taylor. “Reclaiming Revolution” “Reclaiming Revolution,” *Finnish Yearbook of International Law* (Vol. 22, 2011), at 259-292.

⁹⁵²*Ibid.*, 273.

⁹⁵³Balakrishnan Rajagopal. *International Law from Below*, *supra*, ft. 317, at 293.

⁹⁵⁴Taylor, *supra*, ft. 951, at 263.

whereby ‘any kind of agency’ becomes possible and ‘the structure becomes *entirely* contingent’.⁹⁵⁵ The reality is that different forms of action are effective depending on the particular structural conditions pertaining at any given time.⁹⁵⁶ This chapter is concerned with this latter disconnect between the notions of structure and agency that is prevalent in TWAIL scholarship. My argument is that TWAIL scholars should shift their focus to a study of what I refer to as ‘conjunctural resistance’ or ‘conjunctural agency’ rather than ‘plural resistance’ (or agency) that is waged against international law at any given time. To do this is to realize that it is the conjuncture that should be studied to understand agency.

The concept of the *conjuncture* is derived here from Marxist theory and analysis, in particular from the formulations of V.I. Lenin and, later, Antonio Gramsci. Louis Althusser defines the conjuncture as denoting, ‘the exact balance of forces, state of overdetermination of the contradictions at any given moment to which political tactics must be applied’.⁹⁵⁷ Referring to Lenin’s approach in the 1917 Russian revolution, Althusser demonstrates how ‘the history of imperialism’ was analyzed by Lenin in its current conjuncture as opposed to the typical Marxist theoretician and historian who was merely concerned with historical knowledge: ‘Lenin meets Imperialism in the modality of a *current* existence: in a concrete present. The theoretician of history or the historian meet it in another modality, the modality of non-currency and abstraction.’⁹⁵⁸ He goes on to argue that Lenin’s (conjunctural) approach to the ‘current situation’ at that time was unique as he was concerned with the ‘typicality of the contradictions, with their displacements, their condensations and the “fusion” in revolutionary rupture that they produced...[in other words] what makes it possible to act on History from within the sole history present... not [merely] to demonstrate or explain the “inevitable” revolutions *post festum*, but to make them in our unique present...’⁹⁵⁹ As Stuart Hall makes clear, the conjuncture is the product of ‘many determinations’, not of one.⁹⁶⁰ Conjunctural thinking therefore involves ‘clustering’ or assembling elements into a particular formation.⁹⁶¹ In this way, the concept of the conjuncture can be used as an analytical tool for identifying strategic sites of political action that have emerged and when used properly would open up possibilities for transformation.

⁹⁵⁵ *Ibid*, at 274.

⁹⁵⁶ *Ibid*, at 271.

⁹⁵⁷ Louis Althusser. *For Marx*, (London: Verso, 2005), at 250.

⁹⁵⁸ *Ibid*, at 178.

⁹⁵⁹ *Ibid*, at 180.

⁹⁶⁰ Koivisto, J., Lahtinen, M. ‘Historical-Critical Dictionary of Marxism: Conjuncture, politico-historical’ *Historical Materialism* 20.1 (2012) 267-277, at 274.

⁹⁶¹ *Ibid*.

TWAIL analysis has, for the most part, disregarded the significance of the conjunctures that allowed for the possibilities of ‘resistance’, and their implications within the context of international law. By shifting the focus on the conjuncture, TWAIL scholars would become more attentive to the pressing question of political action. Of course, TWAIL scholarship has often concerned itself with the question of the agency of Third World peoples, and there have been a significant number of works that have examined the role of *social* movements in the development of international law.⁹⁶² What I am concerned with here, however, is the necessity of locating agency conjuncturally within the wider narrative of the imperialism of international law put forward by TWAIL. My intention in this chapter therefore is to extend certain aspects of the conjunctural analysis to TWAIL approaches, through this study of Iraqi history, so that one could more effectively grasp (and more importantly apply the lessons of) the history of revolutionary action and ‘resistance’ to international law’s imperialism in the present conjuncture.

What follows is a detailed account of the *Wathba*, a revolutionary event of ‘conjunctural resistance’ in Iraq, which started out against the extension of the (unequal) treaty between Iraq and Britain ‘under the guise’ of its revision.⁹⁶³ The *Wathba* eventually turned into the rejection of the ‘semi-peripheral sovereignty’ that was granted to Iraq through the Mandate system in 1932. I refer to ‘conjunctural resistance’ as a kind of counterweight to TWAILian ‘plural resistance’ to illuminate the fact that it is the conjuncture that should inform one’s understanding of agency rather than its plural character. It will be clear from my analysis that resistance could only be said to be constitutive of international law (if at all) *at certain conjunctures* and not *tout court* (as TWAIL scholarship suggests). I will use the *Wathba* to illustrate an example of *how* a ‘conjunctural analysis’ could be undertaken in relation to the history of Iraqi resistance to imperialism and Iraqi agency within international law. After detailing this narrative, I will return to the present analysis to tease out the unique conjunctural characteristics of this event by assessing how working-class agency (through the labour movement) attempted to subvert the imperialism of international law, eventually situating it more broadly within the conjuncture of decolonization in the shifting international legal order.

⁹⁶² See Pooja Parmar. *Indegeneity and Legal Pluralism in India: Claims, Histories, Meanings*, (Cambridge: Cambridge University Press, 2015).

⁹⁶³ Batatu, *supra*, ft. 41, at 546. It should be noted that I am not referring to the ‘event’ here in the same manner as Alain Badiou does.

III. The British Empire's 'New Clothes of Treaties and Pacts'

al-Wathba (literally, 'the leap') was a social uprising initially sparked by news of negotiations and then the signing of a revised unequal treaty between Iraq and Britain in 1948. In Chapter 3, I traced the evolution of the unequal treaty and its role in the manufacturing of what I call Iraqi 'semi-peripheral sovereignty,' a form of sovereignty that was particularly unique to the geopolitical specificities of the semi-peripheral Middle East. The *Wathba* should be understood within this context of the history of international law and the Mandate system, so as to appreciate why the Iraqi masses decided to wage a struggle against it. As I have argued in Chapter 3, the semi-peripheral sovereignty that was juridically constructed (and threaded in the 1930 Anglo-Iraq Treaty) to ensure Iraq's 'independence' was in reality made to *legitimize* and *legalize* the extraction, production and transportation of Iraq's most valuable natural resource (oil) across the region to the world – to the benefit not only of Britain, but the capitalist world economy. Hence, international law through the Mandate system produced a unique form of semi-peripheral sovereignty out of the Iraqi experience. However, this was not possible without the use of the old colonial instrument of the treaty, which ultimately ensured that the Iraqi state not only appeared independent but also was 'independent' under international law, although in reality it remained subservient to imperialism.

The semi-colonial Iraqi state was unable to maintain its hegemony because the sovereignty it was granted constricted it from doing so successfully. Semi-peripheral sovereignty fragmented the governing capacity of the Iraqi state. So, fragmentation was present not only, as I detailed in the Chapter 1, in rural Iraq, where there were two separate legal systems, but also in the oil fields which were imperial enclaves governed by the concessionary agreement, and the railways and the Port, which were semi-colonial enclaves. It was this type of fragmentation that made it very difficult for the semi-colonial Iraqi state to impose its hegemony without the violence of the emergency doctrine, and this made the counter-hegemonic movements, such as the illegal underground communist party, very popular with the masses. As will be shown, it was in a decisive moment in Iraqi history where imperialism schemed to reassert itself under the guise of international law did all the mini-struggles (of the workers, peasants and students) come together, and where the counter-hegemonic movement was now in a position to take the opportunity presented to it by history to wage an overall anti-colonial and anti-imperial struggle against the social order.

IV. The making of the 1948 Portsmouth Treaty & its implications

Once the British and their Iraqi counterparts agreed that they needed to revise the now visibly outdated and much hated 1930 Anglo-Iraq Treaty, secret negotiations commenced as early as 1946. The 1930 Treaty was drafted under the Mandate system and League institutions that the Iraqi government found to be no longer viable in a post-war world. The British government saw this as an opportunity to update the treaty (redefining their corresponding hegemony) under the guise of the UN Charter that emphasized the notion of ‘equality’ between nations under international law. In that sense, rather than actually addressing the limitations of what I have referred to as ‘semi-peripheral sovereignty,’ the new treaty merely redefined it in a manner that *appeared* to be acceptable for the Iraqis, but more specifically, to be consistent with the newly emerging post-war international legal order. It was for this reason that throughout the negotiations, Bevin was insistent that the treaty was being drafted ‘under strict conformity with the UN Charter’ and emphasized that it was ‘in spirit and in heart’ drafted on the basis of ‘perfect equality’⁹⁶⁴ or ‘complete equality in all respects’. Bevin hoped that this new arrangement would be as much a breakthrough for Iraq (and the region) as the Empire’s settlement with India.⁹⁶⁵

If one examined the provisions of the treaty closely, it would become clear that although the treaty promised the eventual withdrawal of British troops and the surrendering of military bases to Iraq, it gave the British a say in Iraq’s military planning through the establishment of a Joint Defense Board (JDB), which continued the employment of British military ‘experts’. The JDB, which was a joint high-ranking military body tasked with the coordination of defensive plans, had explicit advisory powers under the treaty to make the (expert) decision of when Iraqi government may ‘invite’ British troops back into the country.⁹⁶⁶ In other words, the treaty ensured that the Iraqi government would surrender their bases to Britain in wartime, making it impossible for a stance of neutrality. Moreover, the treaty made a provision for the continued access for ‘operational forces’ of the R.A.F. to the Shu‘aybah and Habbaniyyah bases until withdrawal of the ‘allied armies’ from ‘all-ex-enemy countries’ (a far fetched possibility from

⁹⁶⁴ TNA. ‘Minutes of a meeting with the Iraqi Delegation held at the Foreign Office on the afternoon of 7th January, 1948’, E 409/27/93/G, FO 371/68442 [9359]; ‘Minutes of a meeting held at Foreign Office on January 9th to consider the Anglo-Iraqi Treaty at 2:30 p.m.’, E 409/27/G, FO 371/68442.

⁹⁶⁵ *Ibid.*

⁹⁶⁶ Article 1(b), *Treaty of Alliance between His Majesty in respect of the United Kingdom of Great Britain and His Majesty the King of Iraq*, Portsmouth, 15th January, 1948, Cmd. 7309.

the Cold War reality).⁹⁶⁷ It also safeguarded British influence fifteen years beyond the time limit of the old treaty.⁹⁶⁸

The Iraqi delegation, which arrived in London to secretly negotiate and sign the new treaty, were so overtly concerned with the nitty-gritty legalese and specific wording of the document that they ignored the larger implications of the treaty, which in fact so clearly entrenched Iraq further into imperialist control.⁹⁶⁹ In this way the Portsmouth Treaty as it came to be known turned out to be no more than an extension of the 1930 treaty couched in ‘new-fashioned terminology’ that did not alter much of the old relationship.⁹⁷⁰ The PM himself was aware that what was being done was merely cosmetic and a matter of appearances when he bluntly stated during negotiations that despite the end of the Mandate in 1932, the Iraqi people considered ‘the present position of their country was that of an occupied country’ [...] ‘it was [therefore] essential for the Iraqi government to *show* the people the effect of the treaty. The departure of British forces in Iraq would convince the people that their country had really gained full independence, *even if these units were later invited to return.*’⁹⁷¹ One British official foreshadowed the troubles that would ensue when he cautioned in a minute that, ‘we should be careful not to take the line that the above provisions of the treaty cement to our retention of our strategic hold on Iraq i.e. that we have tricked the Iraqis into letting us continue our military occupation in practice at the expense of a few concessions’.⁹⁷² As will be shown, the Iraqi people were in fact quite aware that the treaty was not merely a sham, but a form of skillful legal trickery

⁹⁶⁷ Article 1(d).

⁹⁶⁸ *Ibid.*

⁹⁶⁹ A good example is when discussion revolved around the word ‘grants’ in the draft of Article 1(d), which stated, ‘In time of peace His Majesty the King of Iraq grants His Britannic Majesty to station operations units of the Royal Air Force at the air bases’. The Iraqi delegation preferred to replace the word ‘grants’ with the words ‘may invite’ instead as they saw a distinction between war, peace and the current state of neutrality. They did not believe that during a situation of ‘real’ peace that operational units should be granted access to the bases. The British eventually accepted this draft reluctantly, as they argued it was the only way to defend Iraq in an emergency. However, despite this change of wording, the JBD still had the final discretion to decide on whether it was a time of peace or war. This illustrates the extent of negotiations between the contracting parties as the important consequences of the treaty were ignored for its legalese or (cosmetic) wording. TNA. ‘Appendix to Brief for Iraq Treaty Negotiations’ Anglo-Iraq Treaty: Brief for Secretary of State, 16 Jan 1948, E454/G, FO 371/68442. In any case, as Louis writes, ‘the ground had been so thoroughly laid that the meetings in London were pensive and sometimes almost festive occasions rather than sessions of hard bargaining,’ Wm. Roger Louis. *The British Empire in the Middle East 1945-1951: Arab Nationalism, the United States and Postwar Imperialism*, (Oxford: Oxford University Press, 1984) at 333.

⁹⁷⁰ Batatu, *supra*, ft. 37, at 550.

⁹⁷¹ TNA. Minutes of a meeting with the Iraqi Delegation held at the Foreign Office on the afternoon of 7th January, 1948’, E 409/27/93/G, FO 371/68442.

⁹⁷² TNA. FO 371/68442. Signing of Iraq Treaty: Publicity. E 541/G, 3 Jan 1948.

that did exactly that – prolong the imperial and military (semi-colonial) *de facto* ‘occupation’ of their country. Consequently, while the revision of the 1930 treaty was clearly meant to ensure the continuation of British intervention in Iraqi affairs, it was also explicitly meant to be a ‘model’ for the entire region, whereby all such treaties⁹⁷³ were to ultimately be brought together into a ‘common defense system’ in the region.⁹⁷⁴

V. The ‘Wathba of the people’ takes form

Although Iraqis were continuously resisting the 1930 Treaty and its wide reach into every aspect of their lives, it was the event of the massive *Wathba* uprising that was the defining moment of revolutionary struggle against imperialism. Despite its heterogeneous character, the working class was the *Wathba*’s quintessence. It was a robust alliance between workers and students that led the massive demonstrations on the streets of Baghdad. In the gripping words of Hanna Batatu, ‘an atmosphere redolent of social revolution enveloped Baghdad’ during the *Wathba*, as it was ‘the most formidable mass insurrection in the history of the monarchy ... It was the social subsoil of Baghdad in revolt against hunger and unequal burdens. It was the students and the Schalchiyyah workers braving machine guns ... and dying for their ideas ... [I]t was the political representatives of the various layers of the middle class ... resentful of constraints or plotting for political gains. It was the privileged stratum [of the ruling and landowning classes] ... menaced in their political power and social interests. It was British overlordship shaken, the Anglo-Iraq Treaty of 1930 sapped, and the Portsmouth Agreement of 1948 abolished’.⁹⁷⁵

The struggle of common Iraqis against the treaty started the day after the official announcement of negotiations on January 5, 1948. Mass demonstrations originated at the Law College of Baghdad. Law students left their classes to demonstrate against the treaty, as well as the partition of Palestine.⁹⁷⁶ The police, taking ‘precautionary measures,’ attempted to disrupt their plans and prevented them from leaving the college building.⁹⁷⁷ Stones and bottles were thrown at police.⁹⁷⁸ Thirty-nine students were arrested.⁹⁷⁹ The Iraqi government headed by PM Sālih Jabr, decided to shut down the law college and launched a ‘criminal’ investigation into the

⁹⁷³ Such as the (failed) Anglo-Egyptian Treaty of 1946 and the treaty with Jordan.

⁹⁷⁴ TNA. FO 371/68442. Signing of Iraq Treaty: Publicity. E 541/G, 3 Jan 1948.

⁹⁷⁵ Batatu. *supra*, ft. 41, at 544, 551.

⁹⁷⁶ Humaīdī. *al-Tatwūrāt*, *supra*, ft. 549, at 519-525.

⁹⁷⁷ TNA. British Embassy, Bagdad to FO, London, 7 Jan, 1948. E 197/27/93; FO 371/68442.

⁹⁷⁸ *Ibid.*

⁹⁷⁹ Humaīdī, *supra*, ft. 549.

incident.⁹⁸⁰ This was in reality an excuse to purge the college of those involved in the protest. The cabinet claimed that the protestors were ‘anarchists’ looking to spread discord on campus.⁹⁸¹ Several law professors were suspended and the Dean was transferred to another city. The ensuing witch-hunt led to numerous sympathy protests in other colleges calling for the release of their fellow students. Those apprehended were eventually released a few days later, and the law college reopened.⁹⁸² The movement at this point had a distinctive student character, and it would not be an overstatement to claim that the initial dynamo of organizational action originated at the level of the students’ political party organizations.⁹⁸³ In fact, one participant referred to student action as the ‘seed’ that led to the unification of Iraqi nationalist movement.⁹⁸⁴

In no more than ten days, these seemingly circumscribed student demonstrations would erupt into an unprecedented fervor of discontent, composed of the majority of the underclasses of Iraq. Following the government clamp-down at the law school, the opposition—in particular the outlawed but popular Iraqi Communist Party (ICP)—began organizing all workers on the ground. The “Cooperation Committee” which united most leftist and nationalist parties under its leadership was formed a few months earlier; now an adjunct ICP-dominated “Student Cooperation Committee” was created and joined with it.⁹⁸⁵ These two committees would lead the movement’s demonstrations and strikes throughout the *Wathba*.

The illusive stillness of the next week was broken when the official announcement was made on January 16 that the Portsmouth Treaty had been signed in London the previous day. A three-day general student strike exploded instantaneously. The students called for the resignation of the cabinet and the cancellation of the Portsmouth Treaty, eventually heading to the headquarters of the infamous Criminal Investigation Department (CID), calling for its downfall and referring to it as the ‘Gestapo of Iraq’⁹⁸⁶. On January 20, the *Schālchīyyah* workers and the famished *sarīfa-dwellers* (squatters) joined the student protests for the first time, broadening the event beyond narrow confines of parliamentary politics. It was also the day that police shot into

⁹⁸⁰ *Ibid*, at 521.

⁹⁸¹ *Ibid*.

⁹⁸² *Ibid*.

⁹⁸³ Sbāhī, *supra*, ft. 191, at 335.

⁹⁸⁴ Editors, ‘al-Majid lil-Wathba al-Amis, al-Thāfir l’intifāda al-Youm,’ [An interview with participants of the *Wathba* on its 40th anniversary], *al-Thaqāfa al-Jadīda*, 193, Issue 3 (35), 1988, at 13.

⁹⁸⁵ For a detailed account of the role of students in the *Wathba*, see Fārūq Prwtw, “Min Thikrīyāt al-Haraka al-Talābīya fī Wathba Kānūn al-Thānī” [Memories from the student movement during the *Wathba* of January], *al-Thaqāfa al-Jadīda*, Issue, 293, Mar/Apr, 2000, at 83.

⁹⁸⁶ Ḥumaidī, *supra*, ft. 549, at 523.

the crowd. The next day, as students carried the dead to their resting place, the police fired shots in their direction and chased them while they were still on hospital grounds. Two died and seventeen wounded. Outrage spread throughout the city for what was considered the criminal actions of the police.⁹⁸⁷ A student who was shot in the head was carried by his colleagues to the office of the dean of his school in protest, leading to the dean's resignation. The resignation of other deans and professors followed. The masses became bitter but remained defiant.

The street became 'a symbol of national unity' as Muslims (Shia and Sunni), Jews and Christians, joined arms in solidarity.⁹⁸⁸ Karīm Murūwwa, who would later become one of the most prominent Lebanese communists, participated in the demonstrations, which had an immense influence on him and further radicalized his political trajectory.⁹⁸⁹ He described the uniqueness of these days by revealing that there emerged 'a kind of democracy [and freedom] that had no constraint,' as illegal newspapers were distributed in the streets, while the leaders of outlawed political parties who lived in the underground for years, emerged from hiding in full view.⁹⁹⁰ Eventually, more Baghdadis from other walks of life joined the protests. The *Wathba* rapidly spread to other parts of the country.⁹⁹¹

Overwhelmed, the Regent, against the advice of the British, capitulated, renouncing the treaty in a public statement, and guaranteed that it would not be ratified against the will of the people.⁹⁹² This led to a splintering of the opposition, as some of the right-wing nationalist, as well as, the national-bourgeois parties recoiled, calling for the end of demonstrations. The left, led by the communists, refused to retreat, considering the Regent's statement as a mere tactic. The ICP and its uncompromising position became the dominant force in the demonstrations, and the *Wathba* was transformed into an event of a categorical revolutionary character.⁹⁹³ The protests were now calling for more than the cancellation of the new treaty, but for the end of British

⁹⁸⁷ *Ibid.* As Kamal al-Chādirjī wrote in an opening of *Ṣawt al-Ahāli* newspaper, the police contravened '...even the laws of war [which] make it illegal for the use of firearms in hospitals and health organizations...' *Ṣawt al-Ahāli*, 9/2/1948.

⁹⁸⁸ Orit Bashkin. "A Patriotic Uprising: Baghdadi Jews and the *Wathba*," in Nelida Fuccaro (ed.), *Violence and the City in the Modern Middle East*, (Stanford University Press, Stanford: 2016), 151-167 at 163.

⁹⁸⁹ Karīm Murūwwa, *Karīm Murūwwa Yatathakar* [Karim Muruwwa Remembers], Saqir Abu Fakhir (ed.) (Damascus: al-Mada, 2002), at 42-43.

⁹⁹⁰ *Ibid.*, at 42-43.

⁹⁹¹ Batatu, *supra*, ft. 41, at 551.

⁹⁹² *Ibid.*

⁹⁹³ According to one communist participant, 'If we had followed the instructions of the national bourgeois parties [of easing the demonstrations], there would have been no *Wathba*', *supra*, ft. 980, at 14.

imperialism and the formation of a truly national democratic government. Their calls were not merely concerned with ‘political freedoms,’ but at its core were issues relating to economic and social injustice. This could be especially ascertained by their calls for ‘bread’.⁹⁹⁴ The *Wathba* quickly turned from a demand to replace the cabinet to a call for a profound transformation of the social and political order.⁹⁹⁵

The respected social democrat and lawyer, Kamil Qazānchī, who was the head of the movement’s “Coordination Committee,” addressed the cheering crowd from the roof of the Wadī Coffeehouse, asserting that, ‘You must declare a great people’s revolution, and struggle to establish a people’s government that represents these [laboring] classes.’⁹⁹⁶ The crowds carried the renowned worker-poet, Mohammad Sālih Baḥr al-‘Ulūm on their shoulders. Baḥr al-‘Ulūm had been reciting his improvised thunderous poetry during the past few days, furiously condemning the government’s complicity with imperialism, giving voice to the people and mesmerizing the crowds. That day, he recited his most memorable poem, ‘The People’s Leap’:

O *Wathba* of the People, rend apart

With your maledictions this stupid treaty

For the Portsmouth treaty is a chain

The fetters of unconditional occupation

O *Wathba* of the People, send away

The grief and sadness of sheer evil

That descends upon us, for Iraq

Is the death of every shuttering fool

The stronger logic lies in the struggle of the resisting people

So Bevin will be shut up just as the villain Churchill was muzzled!⁹⁹⁷

⁹⁹⁴ In fact, the government of Saleh Jabr was labeled in the protests as ‘the cabinet of black bread,’ referring to the miserable state of bread that was being distributed by the state to the people. *al-Thaqāfa al-Jadīda*, 193, Issue 3 (35), 1988, *supra*, ft. 984, at 15

⁹⁹⁵ Batatu, *Ibid*, ft. 41, at 553.

⁹⁹⁶ *Ibid*.

⁹⁹⁷ M. Bahr al-‘Ulūm, *Dīwan*, *supra*, at 132-134. For his role in the *Wathba* and the importance of poetry in that regard *see*, Kevin M. Jones. ‘A horizon lit with blood: public poetry and mass politics in Iraq,’ *Social History*, 2014, Vol. 39, No 4, 443-461. Translation of Jones.

Qazānchī's speech and Bahr al-'Ulūm's poem emphasized that the cancelation of the Portsmouth Treaty (or what he referred to in another poem as 'the covenant of the slave'⁹⁹⁸) was in fact more about the liberation of the country from imperial and semi-colonial rule than the negotiation of the contents of the treaty. The statement released by the social democratic National Democratic Party explains this well, plainly stating that 'the truth of the matter is that the British, since its occupation of Iraq, intended to make this country a strategic site in the Middle East, for its own interests ... to exploit its resources, and control its markets'. It goes on to argue that the British were in fact merely 'dressing up colonial [imperial] control with the new clothes of treaties and pacts.' The Portsmouth Treaty was therefore merely 'a new colonial [and imperial] project ... a blatant attack on Iraq's very being, its sovereignty and political future,' and for this reason it should be resisted by Iraqis with all their might.⁹⁹⁹

The *Wathba* came to a bloody culmination in Baghdad on January 27 when intense street battles were waged between the unarmed multitudes (carrying only canes and rocks) and the police equipped with machine guns and armored vehicles. A pendulum-like flowing movement between the two sides became a regular feature of the narrow streets of the city. The urban geography of Baghdad was taken advantage of by demonstrators, while the police were overwhelmed given that they had little experience in the tactics of riot suppression and crowd control.¹⁰⁰⁰ Factories were turned into makeshift infirmaries, where injured demonstrators were stitched up.¹⁰⁰¹ A police car was burned and the headquarters of the British-owned newspaper, *Iraq Times* (which only weeks earlier described demonstrators as 'a mob of looters,'¹⁰⁰²) was set alight. Baghdad, in the words of one writer, resembled a 'war zone'.¹⁰⁰³ The PM Salah Jabr transmitted a radio broadcast calling for demonstrators to end their disturbing of 'the peace and order or [the] contravene[ing] of laws' as this would expose people to 'danger and death'.¹⁰⁰⁴

Police then scrambled to maintain barricades, while others were stationed on roofs and minarets, and had express orders from their commander to break up demonstrations and shoot to

⁹⁹⁸ *Ibid*, at. 2:130.

⁹⁹⁹ For the full text see al-Hasanī. *Tārīkh al-Wizārāt*, Vol. 3, *supra*, ft. 235, at 249.

¹⁰⁰⁰ TNA. G.C. Pelham to FO, 21 Jan 1948. FO 371/68443 E 880/27/93.

¹⁰⁰¹ *Thaqāfa al-Jadīda*, 193, Issue 3 (35), 1988, *supra*, ft. 984, at 15.

¹⁰⁰² TNA. Pelham to FO, Confidential, 25 Jan. 1948, FO 371/68446/E2217.

¹⁰⁰³ *Ibid*

¹⁰⁰⁴ TNA. 'Broadcast Communiqué by Iraqi PM on 27th January, 1948', E2020/27/93. FO 371/6646/27.

kill if necessary. Huge crowds gathered on both sides of the entrance of the Ma'mūn Bridge¹⁰⁰⁵ with the intention of meeting at the center of the bridge in defiance of the police. As the crowds courageously moved forward, police sprayed bullets in their direction. The shots only fell silent after a fifteen-year old girl (later coined 'the girl of the bridge') appeared out of the chaos and continued towards the midpoint of the old bridge.¹⁰⁰⁶ The police pulled back and the two flanks of the masses ultimately converged. An estimated 300 to 400 died on the bridge that day.¹⁰⁰⁷ Bodies hung from the bridge, and others floated in the Tigris River below.¹⁰⁰⁸ This bloody event led to the resignations of over a dozen ministers, including the Speaker of the *Majlis*, who watched the entire incident from the balcony of the Parliament building.¹⁰⁰⁹ The 'Day of the Bridge', as it came to be known endures in the annals of Iraqi history and folklore as the moment when ordinary unarmed Iraqis gave their lives to rid themselves from the chains of imperial and semi-colonial rule and expunge the ruling class' black ink with which the treaty was signed, with their blood.

¹⁰⁰⁵ After this day the bridge would be renamed as 'The Bridge of Martyrs'.

¹⁰⁰⁶ Batatu, ft. 41, at 557.

¹⁰⁰⁷ *Ibid.*

¹⁰⁰⁸ Sbāhī. *supra*, ft. 191, at 340

¹⁰⁰⁹ al-Qassāb, Abdul Azīz. *Muthakarāt Abdul Azīz al-Qassāb* [The memoirs of Abdul Aziz al-Qassab], (Amman: al-Mu'asasa al-Arabīya lildirāsāt wa al-Nashir, 2007), at 286.

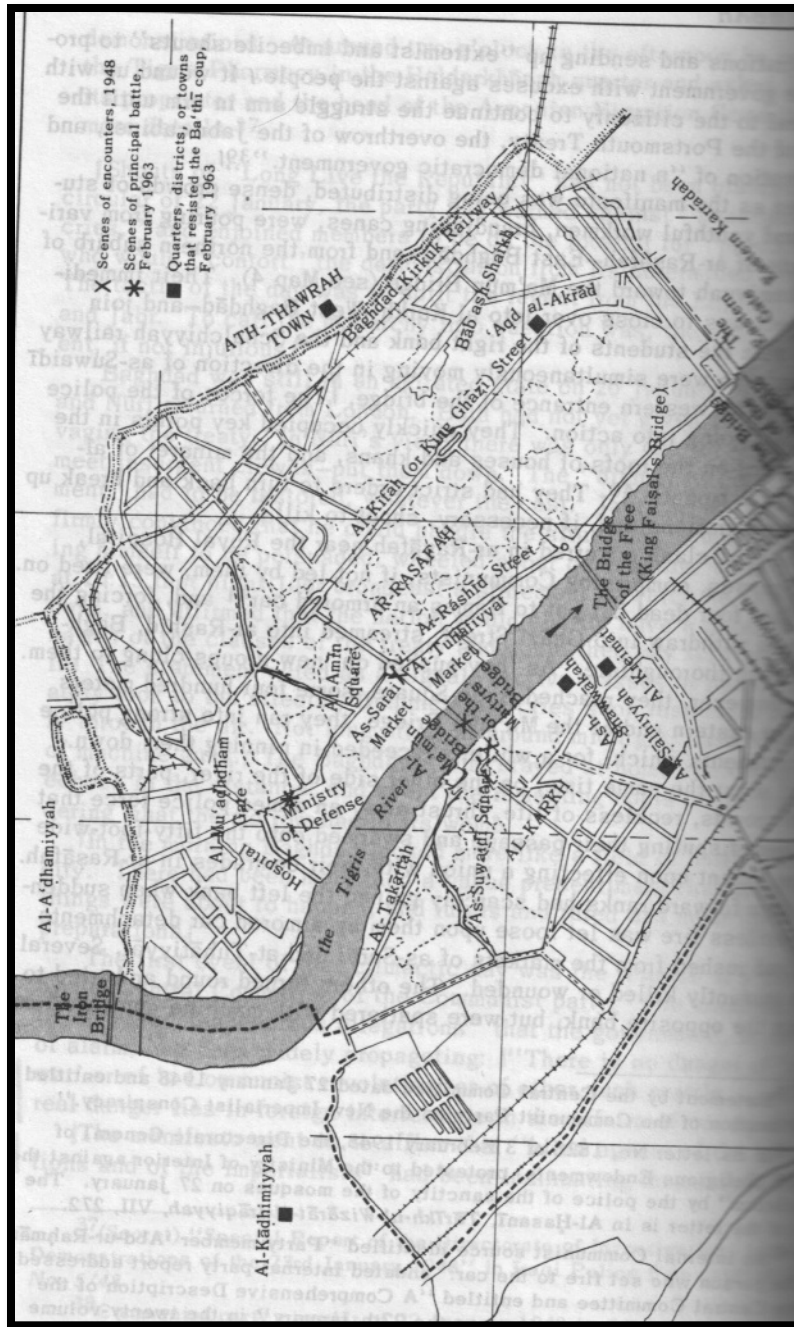


Figure 4: Batatu's map showing the location of the Battle of the Bridge. (Batatu, the Old Social Classes, at 556).

Although the annulment of the Portsmouth Treaty was achieved, the new 'caretaker' government headed by Muhammad al-Sadr, a prominent religious leader, ultimately clamped down on all forms of dissent, declaring martial law, and shutting down newspapers and trade

unions on the basis of national security. It was moreover on the basis of the proclamation of martial law on May 15, 1948 during the *Wathba* that the Iraqi regime had another opportunity to re-try the leaders of the ICP. A wave of repression spread throughout the land and the military courts took every opportunity to make use of the Penal Code's amendment described in the previous chapter – i.e. *Law 51* of 1938- which was referred to in nearly every summary judgment made to sentence thousands of communists, leftists, nationalists and other Iraqis who participated in the *Wathba* demonstrations.¹⁰¹⁰

On 10 February 1949, Fahad, and ICP Politburo members, Zakī Basīm and Mohammed Husayn al-Shabībī, were convicted of having led protests from prison and were sentenced to death once more. This time, however, the sentences were swiftly carried out the next day at dawn. Executed in three different squares in Baghdad, their bodies were left hanging as a clear warning to anyone who dared to challenge the semi-colonial Iraqi order. One British official at the scene vividly described these violent displays of power in the following manner: '...ordinary people on their way to work found still hanging these pathetic objects, each moving slightly as it hung from its temporary gallows, the rough prison clothes wrapped around the shrunken-looking body, the ghastly angle of the head behind the mask, the cheap notice describing the crime for which he suffered...Every man in Baghdad was nauseated by this display...'¹⁰¹¹ It was reported in the communist press that Fahad's last words were: 'we are bodies and thoughts; if you destroy our bodies, you will not destroy our thoughts;'¹⁰¹² while al-Shabībī kept repeating, 'it is an honor to be executed in the same square where the *Wathba* of the people was launched'.¹⁰¹³ Basīm cried, 'if I was to return to life for a second time, I would not take any other path but this one, which I have already taken'.¹⁰¹⁴ It is unclear whether these statements were actually made. What is certainly clear was that these executions were meant as the regime's retribution for what transpired during the days of the revolutionary *Wathba*.

¹⁰¹⁰ See *A Secret Encyclopedia Concerning the Secret Iraqi Communist Party (Mawsu'at sirīyya khāssa bi'l hizb al-shuyu'ī al-'iraqī al-Sirī; 1949* (Baghdad: Maktaba al-Nahda al-'Arabiya). This is a three-volume collection of 1,525 pages, which includes confessions, interrogations, police files and rulings of the military tribunals. The police published it in 1949 with the hope of exposing the ICP and discouraging people from joining the party. It turned out to have the opposite effect as it revealed the injustices of police tactics and the regime.

¹⁰¹¹ Caractacus, *supra*, ft. 37, at 51.

¹⁰¹² Batatu, *supra*, ft. 41, at 569.

¹⁰¹³ As quoted by Sbāhī, *supra*, ft. 191, at 408.

¹⁰¹⁴ *Ibid.*

With these violent acts, however, the ruling class made a grave error. Not only was communism now, in Batatu's words, 'surrounded with a halo of martyrdom,'¹⁰¹⁵ but the people's attempts to renew the emancipatory spirit of the *Wathba* persevered rather than dissolving into thin air. Despite the slow strangulation of the movement, it was the *Wathba* that was the spark that ignited the revolutionary process that would materialize in the July Revolution a decade later during the turbulent year of 1958.

VI. The British Assessment of the *Wathba* & the 'logic of the resisting people'

The British assessment of the *Wathba* and its causes was, as would be expected, considered as anything but a genuine nationalist movement. A detailed report by G.C. Pelham, the Acting Charge d'Affaires at the time, surprisingly identified the causes of the 'troubles' as having 'little connection to Anglo-Iraq relations'¹⁰¹⁶, but rather the peoples' mistrust of corrupt government, which he described as an Ottoman legacy.¹⁰¹⁷ Refusing to admit that the demonstrations were anti-British, he saw them solely (and 'personally') aimed at Sāleh Jabr and his cabinet. Mentioning the government's mishandling of the dire issue of economic situation during the year, he especially focused on the public outrage against the partition of Palestine as an underlying cause.¹⁰¹⁸

It was nonetheless the speed in which the treaty was concluded that he argued intensified the suspicions of the people. 'Colour was lent to the accusation', he wrote, '... that the treaty was made in London and handed ready made to the Iraqi delegation for signature'.¹⁰¹⁹ The unavailability of an official Arabic translation of the treaty further fuelled such suspicion.¹⁰²⁰ Pelham's reference to demonstrators as a 'mob' that was menacing 'law and order' and his warning that Iraq was threatened by 'mob rule,' illustrates the British view that the *Wathba* was

¹⁰¹⁵ *Ibid.*

¹⁰¹⁶ This became the 'official' British narrative as Douglas Busk also made a similar argument in his later assessment of the event.

¹⁰¹⁷ TNA. G.C. Pelham to FO, 21 Jan 1948. FO 371/68443 E 880/27/93.

¹⁰¹⁸ The 'Palestine argument', as we have seen in an earlier chapter, has been frequently used by British officials, even when assessing labour strikes. One official wrote, 'if it had not been for Palestine, we should have seen the treaty ratified'. Broadman to Bevin, 1 June 1948, FO 371/68386/E7801.

¹⁰¹⁹ TNA. G.C. Pelham to FO, *supra*.

¹⁰²⁰ TNA. Telegram No. 45, FO to Baghdad, 14 Jan, 1948; 'Iraq Treaty: Publicity', E585/G; FO 371/68442.

an irrational event.¹⁰²¹ He went on to critique Iraqi ‘student thought’, which he saw as conditioned by the view that ‘any foreign commitment takes away from full national sovereignty,’ stating that Iraqis suffer from ‘an inferiority complex’.¹⁰²² Admitting that the belief that the government of Sāleḥ Jabr must fall was ‘all but universal,’ he maintained that although such a situation would be ‘hopeless in a Europe country’, ‘in an Arab one there is perhaps a slender chance’ that the British connection would remain unscathed, as it would merely fall back on the old treaty.¹⁰²³ This admission was nothing less than the recognition of the imperial characteristics of the treaty itself.

Finally, one of the most recurrent analyses of the underlying causes of the demonstrations given by both the British and the Iraqi ruling class (namely the PM himself¹⁰²⁴) was that common Iraqis were too illiterate to even understand the meaning of the treaty. The British blamed the Iraqi government for not educating the public about the contents of the treaty, going as far as saying that the population was ‘largely illiterate and...therefore incapable of reading the treaty itself’.¹⁰²⁵ One official claimed that only ‘an ill-intentioned person could have misunderstood the Treaty’.¹⁰²⁶ Douglas Busk wrote, ‘I had heard the vague slogans of the demonstrations in the streets, but I had not learned from them what were the [legal] points in the treaty to which they objected...’¹⁰²⁷ Putting aside the racist connotations in this overall analysis and the fact that the organized committees detailed above made their demands quite clear, the very working actuality of the *Wathba* illustrates the exact opposite: *the emergent consciousness of the Iraqi masses of how imperialism functions, especially through the law*. One of Baḥr al-‘Ūlūm’s poems, entitled ‘The colonial (Portsmouth) treaty,’ which he recited to cheering crowds during the early days of the *Wathba*, demonstrates how the masses grasped the meaning of the treaty in their minds (even if they had not read its every article):

A draft law sent to pave the path for the invader

The propositions of this bill sanctioned invasion

Employing the language of bullets to impose itself

¹⁰²¹ TNA. G.C. Pelham to FO, *supra*.

¹⁰²² *Ibid*.

¹⁰²³ *Ibid*.

¹⁰²⁴ See Najda Fathī Sūfwā, *Sāliḥ Jabr: Sīra Syāsīya*, (London: Dar al-Saqi, 2017).

¹⁰²⁵ TNA. Henry Mack, British Embassy, Bagdad to Michael Wright, London, 9 Feb 1948. E2693/27/93/G, FO 371/68446.

¹⁰²⁶ *Ibid*.

¹⁰²⁷ TNA. Douglas Busk, British Embassy, Bagdad to Bevin, FO, London. 6 Feb 1948. E 2611/27/93. FO 371/68446.

And compelling co-operation from the barking dogs
While the people prepare for the tribulations of night
A language for understanding the occupation of yesterday¹⁰²⁸

Busk's insistence therefore that the crowd give him a 'legal argument' regarding their rejection of the Treaty misses the point which is that the very existence of a 'colonial' treaty that practically 'sanctioned occupation' and prolonged their domination by an imperial power, was the problem. The contents of the treaty mattered little if the intention of the contracting parties remained the same—the maintenance of the British connection. As Marx once wrote about the Paris Commune, 'the great social measure of the Commune was its own working existence'. In other words, one should not measure a revolutionary event such as the *Wathba* based on its ideas or even law, but rather it should be measured based on its 'working existence' on the ground. Here, it is plain that the movement's organization and committees – i.e. its very organized actions – was an indication of the type of social order that was being sought: one that allows for the *participation* of the majority of the Iraqi people and especially the working class and the peasants. It is this that could be referred to as the 'logic of the people' rather than a legal argument or the logic of the law.

VII. The *Wathba* from the lens of the labour movement

Labour Unions, preserve the honorable people
And erect for the workers some triumphal arches
The signs have begun and so their nobility proceeds
In this movement, the *Wathba*, what a wonderful effect

~ Mohammad Salih Bahr al-'Ulūm¹⁰²⁹

The *Wathba* has been largely interpreted as a nationalist anti-colonial struggle for the assertion of the constitutional rights of the Iraqi people, which were infringed and weakened by the 1930 Treaty.¹⁰³⁰ However, it also contains a unique labour narrative underlying its history,

¹⁰²⁸ M. Bahr al-'Ulūm, *Diwan, supra*, ft. 310, at 129.

¹⁰²⁹ *Ibid*, at 2:130.

¹⁰³⁰ Al-Chadirjī, Kāmil *Mudhakkirat Kāmil al-Chadirjī wa Tārīkh al-Hizb al-Watanī al-Dīmuqrātī [The Memoirs of Kamil al-Chādirji and the History of the National Democratic Party] (Beirut: Dar al-Tal'ia, 1970).*

which had a particular significance to the conjuncture in question, and which I have detailed in mini-histories in previous chapters. In other words, one way to understand the *Wathba* is through the lens of the labour struggle against the semi-peripheral sovereignty and its social and economic implications on the lives of the ordinary Iraqi working classes. As Eric Davis has emphasized, workers provided ‘the backbone’ of the *Wathba*.¹⁰³¹ The Iraqi labour movement was making strides in their continuous struggle against their British employers of the colossal industrial enterprises (namely the port, railways and oil refineries). Before the *Wathba* exploded, continuous labour strikes in these enterprises were rapidly becoming a concern for the British authorities.¹⁰³² The workers were not merely angered by their wretched conditions, but were also able, because of their unique location within the semi-colonial system (map) of capitalist exploitation, to make a direct correlation between their immediate material conditions and the far-reaching issue of imperialism.

To understand the role of the labour movement in the *Wathba*, one must recall the organizing efforts several years earlier of the railway, port and oil workers, described in previous chapters. During the years leading up to the *Wathba*, the workers continuously developed extensive experiences in organizational tactics and strategies of strike action and protest, which made all the difference when they were on the ground, hand in hand with their Iraqi brethren fighting against the Portsmouth Treaty. Moreover, the workers’ cognizance of the direct relationship between British imperialism and semi-colonialism, and the Iraqi state that they became gradually aware of during their labour struggles was *now* embedded into the overall national consciousness and ‘common sense’ of the majority of common Iraqis. The working class were after all, as shown earlier, the class that was most effected by the implications of the treaty and ‘semi-peripheral sovereignty’ in their everyday lives.

An argument could therefore be made that the unique experiences of the workers and their movement contributed significantly to the momentum of the *Wathba*. If the students could be considered as those who ignited the *Wathba*, its organizational momentum was surely maintained by the workers and their concrete experiences, for throughout the months after the ‘Day of the Bridge’, labour strikes intensified like never before. There was, in the words of S’uād Khayrī, an ‘awakening’ within the labour movement.¹⁰³³ The strikes were so potent that Nurī al-

¹⁰³¹ Davis, *supra*, ft. 596, at 293

¹⁰³² TNA. British Embassy, Baghdad to Foreign Office, 21 May 1948, enclosing minute on strikes at IPC [FO 371/68479].

¹⁰³³ Khayrī, *supra*, ft. 562, at 171, 173

Saïd publically remarked at the time that what he feared the most was not the actual demonstrations that led to the cancellation of the treaty, but rather the intensification of labour strikes, which he was afraid would lead to a communist revolution.¹⁰³⁴ In that sense, the anti-colonial nationalist struggle shifted into the ‘axis of labour’, turning strike action into the ‘beating heart’ of the *Wathba* movement.¹⁰³⁵ Labour (economic) struggle and anti-colonial (political) struggle became precisely *one and the same* at this conjuncture. It was after all throughout these months that the massive successful Basra Port strike unfolded, and the legendary K3 pumping-station strike, which carried the ‘liberationary [and solidarity] spirit of the *Wathba*,’¹⁰³⁶ became a concrete reality. Martial law would ultimately be declared to violently repress these labour strikes. It is therefore not an overstatement to consider the *Wathba* as the wider reflection of a labour struggle against the semi-peripheral sovereignty that gave the juridical and ideological cover needed for the imposition of the capitalist economic structures on Iraq.

VIII. The wide implications of the Wathba & its contribution to the conjuncture of decolonization in international law

I will now return to my earlier analysis of TWAIL and its methodology by inserting the social and juridical implications of the *Wathba* into my theoretical argument. My contention was that TWAIL scholars should begin the study of the conjuncture in the history of international law – connecting their concern for the ‘micro-histories of resistance’ to a much broader understanding of the conjuncture in question. This would allow for the bridging of all these micro-histories into an overarching understanding of agency. Consequently, the conjunctural moment, which allowed anti-colonial and anti-imperial resistance to materialize in Iraq cannot be explained without an attempt to understand the *wider* conjuncture of decolonization in the region and the Third World. Decolonization, as Mohammed Bedjaoui reminds us, is by its very definition a ‘structural revolution *on a world scale*’.¹⁰³⁷ For this reason a conjunctural analysis must begin ‘at the level of the international itself,’ ascertaining ‘a dominant combination of causes’ while evaluating ‘the

¹⁰³⁴ *Ibid.*

¹⁰³⁵ *Ibid.*

¹⁰³⁶ al-Nū‘mān, *supra*, ft. 580, at 266.

¹⁰³⁷ Mohammed Bedjaoui. *Towards A New International Economic Order: New Challenges to International Law*, (New York: Holmes & Meier, 1979), at 88.

period characterized by the working out of that combination.’¹⁰³⁸ It entails the necessity of simultaneously ‘looking inwards to examine the detailed movement of a given period and outwards to locate that period in the longer historical process which it forms a part.’¹⁰³⁹

A conjunctural analysis in international law, therefore, would have to be attentive to the organic movement within this wide scale while analyzing agency, focusing on, using the words of Antonio Negri and Michael Hardt, the ‘intersections’ and the ‘accumulation of struggles’ against international law.¹⁰⁴⁰ Although TWAIL scholars are generally familiar with such an analysis – one which Gramsci would refer to as the study of the ‘long waves’ of history¹⁰⁴¹ (for instance Anghie’s return to the thought of Francisco de Vitoria in the sixteenth century) – what tends to be missing in general is how this connects to agency (or using TWAIL vocabulary: resistance). The conjuncture therefore acts as a bridging device for one’s analytic lens in relation to the notion of agency that could be used in tandem with the study of the imperial structures of international law. It is nevertheless not merely a matter of contextualization, but rather about continuously being attentive to the question of agency and action in one’s wide analysis. Before moving to assess Iraqi working-class agency, I will first address the structural implications of the *Wathba* on a variety of different interconnecting and intersecting levels – the Iraqi, regional and international.

On the Iraqi level, the *Wathba* contained the origins of the revolutionary process that culminated in the overthrow of the British-sponsored Monarchy by the 1958 July revolution. It certainly inspired and stimulated the Free Officers to take matters into their own hands to defend the people from ‘the incubus of injustice that weighed upon them’.¹⁰⁴² I would go as far as to argue that the *Wathba* could be considered as the ‘dress rehearsal’ for the 1958 revolution, especially if one was to consider that the revolutionary process of struggle was sustained throughout the decade resurfacing as mini-Wathbas – namely, the *Intifāda* of 1952 and the Uprising of 1956. In many ways, it was the spark that started the process of the brewing and making of the revolution. It is in that sense that the *Wathba* and the revolution were a part of the same Iraqi conjuncture. The July revolution was a genuine revolution that broke with the *ancien régime*. The Proclamation No. 1 that was read out on Baghdad Radio announced the establishment of a republic, promised that the Iraqi people would participate in shaping their own

¹⁰³⁸ Justin Rosenberg quoted in Koivisto, ‘Historical-Critical Dictionary of Marxism’, at 273.

¹⁰³⁹ *Ibid.*

¹⁰⁴⁰ Michael Hardt, & Antonio Negri. *Empire*, (Massachusetts: Harvard University Press, 2000), at 263

¹⁰⁴¹ See Maurice Finocchiaro. *Gramsci and the History of Dialectical Thought* (Cambridge: Cambridge University Press, 2002), at 164.

¹⁰⁴² Col. Abdul Karim Qassim’s words as quoted by Batatu, *supra*, ft. 41, at 806.

future, and established a neutralist foreign policy (explicitly referring to Bandung), ending its close alliance with the West.¹⁰⁴³ The revolutionary processes began with the drafting of a Provisional Constitution barely two weeks after the revolution, frustrating the subjugating structures of the old constitution or Organic Law, which limited popular sovereignty as shown earlier. Furthermore, the new Agrarian Reform law ended the ‘semi-feudal’ system that was the foundation of British policy and control, destroying the social power of the landed sheikhs by finally bringing the countryside under the purview of state law.¹⁰⁴⁴ Finally, the position of urban workers and the working class were significantly enhanced by the revision and enactment of an updated progressive labour law for the protection of workers’ rights and their trade unions. As for the anti-hegemonic impact of the *Wathba* on the region, it was apparent in how it inspired countless sympathy strikes and demonstrations in Beirut, Damascus, and Cairo. A revealing clipping from a Cairo newspaper read, ‘the Iraqi people did not only save itself, but saved the entire Arab world from remaining under Western colonial subjugation.’¹⁰⁴⁵

To situate the *Wathba* internationally, one would need to analyze how its revolutionary impetus was partially successful in striking imperialism by preventing the imposition of a revised treaty. To do that it would be necessary to understand other regional and international events that rendered it the appropriate moment to attack (British) imperialism. Here, the weaving of other events of conjunctural resistance against imperialism and the international legal order that happened in the Third World that year is necessary to grasp the vulnerability of British imperialism at that particular moment. Frank Furedi has detailed the conjuncture that emerged during that unique year of 1948 for anti-colonial and nationalist liberation struggles in the Third World.¹⁰⁴⁶ He demonstrates how 1948 was a year of widespread panic in Whitehall as a crisis of imperial rule emerged unexpectedly, where anti-colonial and anti-imperial resistance reached its utmost intensity: ‘No part of the empire seemed immune from what appeared to be an epidemic of unrest’.¹⁰⁴⁷ Twelve days before the *Wathba*, Burma rejected Commonwealth membership, while February saw riots in Accra and in June emergency rule was established in Malaya.¹⁰⁴⁸ Of course, regionally 1948 was the year that the tragic Palestinian *Nakba* (catastrophe) was

¹⁰⁴³ See Juan Romero. *The Iraqi Revolution of 1958: A Revolutionary Quest for Unity and Security*. Maryland: University Press of America, 2011).

¹⁰⁴⁴ Marr, *supra*, ft. 212, at 105.

¹⁰⁴⁵ *al-Nida’ Newspaper*, (Cairo, February 5, 1948) as quoted in Humaidi, *supra*, ft. 709, at 546.

¹⁰⁴⁶ Frank Furedi. *Colonial Wars and the Politics of Third World Nationalism*, (London: I.B. Tauris, 1994), at 4, 88-108.

¹⁰⁴⁷ *Ibid*, at 89.

¹⁰⁴⁸ *Ibid*.

unfolding, and more than anything else this event represented the injustices of colonialism and imperialism for the Arab peoples. A focus on the manifestation of the conjuncture on the international scale would take all of these into account in one's analysis of this particular moment of Iraqi agency against the imperialism of international law.

The *Wathba* could be situated in the conjuncture that was emerging within the international legal order and which manifested in the signing of the 1960 *Declaration on the Granting of Independence to Colonial Countries and Peoples* (GA Resolution 1514).¹⁰⁴⁹ The significance of this document, sometimes referred to as the 'Magna Carta' of decolonization, should not be understated.¹⁰⁵⁰ The UN Charter of 1945 failed to clearly condemn colonialism, and its imposition of a duty of administration of specific colonies could arguably be construed as recognizing the legality of colonialism.¹⁰⁵¹ The fact that the Portsmouth Treaty, as I have shown, was (legally) drafted in a manner that fully conformed to the UN Charter is evidence of this limitation. The 1960 *Declaration* was therefore the first instrument in the history of international law whereby colonialism and imperialism were deemed unlawful and in contravention of the UN Charter. As Christopher Quaye observed, the preamble of the *Declaration*, 'decried colonialism ... by observing the universal position against perpetuation of colonialism and expressing belief in liberation from anything that is colonial'.¹⁰⁵² In its words, the declaration: '*Solemnly proclaims the necessity of bringing a speedy and unconditional end to colonialism in all its forms and manifestations*'.¹⁰⁵³ Despite its significance in international legal history, the *Declaration* did not fully accelerate the process of decolonization at a pace corresponding to the hopes of the peoples under colonial rule, as its implementation had to be continuously fought for by the bloc over the next few years.¹⁰⁵⁴ Nevertheless, the contribution of the Iraqi anti-colonial and anti-imperial struggle to this *Declaration* was clear.

The *Wathba* and its revolutionary consequences on the Iraqi plane was only one event amongst a series of similar revolutionary events in other parts of the Third World that had a direct influence on the way the representatives of the Afro-Asian bloc in the U.N., adhering to the

¹⁰⁴⁹ *Declaration on the Granting of Independence to Colonial Countries and Peoples* (1960), G.A. Res. 1514 (XV), UN GAOR, 15TH sess., 947th plen. Mtg, UN Doc. A/RES/1514 (XV) (14 December 1960).

¹⁰⁵⁰ Quayson-Sackey, as cited in Quaye, Christopher. *Liberation Struggles in International Law*, (Philadelphia: Temple University Press, 1991), 111.

¹⁰⁵¹ Quaye, *Liberation Struggles in International Law*, *supra*, at 108-109.

¹⁰⁵² *Ibid*, at 112.

¹⁰⁵³ *Decelaration on the Granting*.

¹⁰⁵⁴ Sharma, D.N. *Afro-Asian Group in the U.N.* (Allahabad, Chaitanya Publishing, 1969), at 205.

Bandung Spirit, were aggressively arguing for the drafting and liberal interpretation of this *Declaration*, while maintaining a firm anti-colonial stance.¹⁰⁵⁵ It was clear that legal arguments were specifically made on the basis of ‘the political weather outside the [U.N.] Headquarters’.¹⁰⁵⁶ In other words, not only was the law rejected as a mechanism for dealing with the question of colonialism and imperialism, but the wave of events of decolonization on the ground were considered as necessary sources for the drafting and molding of international law and its instruments. The bloc continuously insisted that these anti-colonial struggles must be *unconditionally* recognized as legitimate – international ‘law should be modified according to changed circumstances’.¹⁰⁵⁷

The permanent representative of the revolutionary government of Iraq in the U.N., Adnān Pāchachī took part in the drafting of the 1960 *Declaration*.¹⁰⁵⁸ The Iraqi delegation ended up co-sponsoring, together with a number of Asian and African states, the *Declaration* when it was presented to the General Assembly. In an impassionate and eloquent speech to the Assembly, the new Iraqi Foreign Minister, Hāshim Jawād began by recounting the long history of colonialism in the Arab World beginning with the first experience of European imperialism with the French conquest of Algeria in 1830, eventually referring to the Mandate system as ‘a new form of colonialism’ that was imposed on the peoples of the Middle East.¹⁰⁵⁹ Jawād accordingly directly rejected the ‘semi-peripheral sovereignty’ that the Iraqi masses attempted to abolish with their blood, sweat and tears during the *Wathba* and thereafter. He went on to state that although the Mandate in Iraq was terminated in 1932, it was replaced by a new relationship that retained for the former Mandatory Power great influence in the internal affairs of the country, stressing that ‘it took another twenty-six years and our great July Revolution of 1958 for the people of Iraq to rid the country finally of the last vestiges of foreign domination and influence.’¹⁰⁶⁰ Jawād then emphasized how he regarded all struggles for decolonization as interconnected by specifically referring to the Arab and Iraqi experience:

¹⁰⁵⁵ *Ibid.*

¹⁰⁵⁶ El-Ayouty, *supra*, ft. 944, at 60.

¹⁰⁵⁷ R.P. Anand. “Attitude of the Asian-African States Towards Certain Problems of international Law,” in Snyder and Sathirathai (eds.), *Third World Attitudes Toward International Law: An Introduction*, Dordrecht: Martinus Nijhoff Publishers, 1987), at 14.

¹⁰⁵⁸ Pachachi, Adnan. *Iraq’s Voice at the United Nations 1959-69: A Personal Record*, (London: Quartet Books, 1991), at 9.

¹⁰⁵⁹ UN GAOR, 15TH Sess., 937th plen. Mtg., UN Doc. A/PV 937 (6 December 1960), at 120-138.

¹⁰⁶⁰ *Ibid.*

I do not think I exaggerate when I say that few nations in the world have suffered as much as the Arab nation under colonial rule ... the Arab people have known colonialism in its worst forms and manifestations. They have experienced at first hand its oppression and treachery and have suffered from it physically, materially and spiritually as few others have. This is one of the reasons why we have such a deep sympathy and understanding for the struggle of the other nations for freedom and independence.¹⁰⁶¹

He went on to make clear that it was this unique ‘extensive’ and ‘tragic’ experience of (semi) colonialism in the Arab world in general and in Iraq in particular which solidified his delegation’s belief in the importance of an unequivocal anti-colonial wording in the *Declaration*.¹⁰⁶²

The Iraqi contribution to the drafting of this document was hence in ensuring that the semi-peripheral sovereignty that was skillfully weaved into international law in Geneva and granted to Iraq in 1932, as a recognized form of ‘independence’, would be unequivocally rejected in the *Declaration*. International law should instead postulate concrete sovereignty and full independence. N.M. Perrera, the representative for Ceylon (present-day Sri Lanka) plainly explained the meaning of this part of the *Declaration* when he emphasized that reference to the ‘manifestations of colonialism’ specifically refers to ‘the various methods, procedures and legal figments which are used by colonial powers to cover the nakedness of rank colonialism’.¹⁰⁶³ The semi-peripheral sovereignty described earlier and which was a significant part of the Iraqi experience was one of these more sophisticated legal figments that were recognized under international law. It is in this way that the Iraqi experience of the *Wathba* and its revolutionary consequences, in rejecting semi-peripheral sovereignty on the ground, could be linked through a conjunctural analysis to the wider changes within the international legal order.

IX. The significance of labour & working-class agency to the conjuncture of decolonization

The analysis above has shown how ‘resistance’, or more broadly revolutionary agency, is conducive within a particular conjuncture that emerges from the structures in question. TWAIL scholars would traditionally have analyzed the *Wathba* in isolation of these structures, concentrating on certain characteristics of agency as being external and not contingent to these structures (in particular its spontaneity, non-violence, and heterogeneity). However, this narrow approach differs from the conjunctural analysis that brings agency and structure into *one* fold,

¹⁰⁶¹ *Ibid.*

¹⁰⁶² *Ibid.*

¹⁰⁶³ UN GAOR, 15TH Sess., 926th plen. Mtg., UN Doc. A/PV 926 (28 November 1960), 1002.

while it romanticizes agency, approaching it as a form of resistance that is devoid of any revolutionary content. Many TWAIL scholars cannot conceive of emancipation without or beyond the law or the international legal order, despite it being the very target of their critique.¹⁰⁶⁴ The *Wathba*, however, emerged for the very reason that the legal mechanisms of the state that were being manipulated by imperial instruments of international law were inept and completely dysfunctional. It eventually became (at least for the left) about the subversion of the law rather than its mere reform. Furthermore, the *Wathba* demonstrated that the effectiveness of what I refer to as ‘conjunctural resistance’ in the context of revolutionary action depends on its organizational capacity. It is not enough to put one’s hopes on the spontaneity of action as TWAIL scholars tend to do, for despite the unforeseen nature of the *Wathba*, the movement spurred at that particular moment because it was able to readily organize into effective steering committees. This was certainly possible because of some of its participants’ past experiences, especially those of the workers. In this manner, therefore, romanticizing the spontaneity of agency ignores the fact that spontaneity and organization must come *together* within a particular conjuncture to be effective.

I want to end by briefly returning to the significance of labour to the specific conjuncture in question. A focus on labour and working-class agency in this analysis demonstrates the strong affinity between capitalism, imperialism and international law, especially in the semi-periphery. This is what explains the significant role of labour in countering the manifestations of the international legal order within the conjuncture in question. I have already shown how semi-peripheral sovereignty in the Iraqi context was manufactured as a mechanism to control the semi-colonial Middle East. The ‘independence’ of Iraq was more a mechanism to legalize the control of Iraqi oil and regulate its transportation across the region. While the Anglo-Iraq treaty maintained this control juridically, Iraqi labour was exploited to superintend the everyday functioning of this infrastructure of economic dominance. In this way, colonial and racial relations remained intact after Iraqi ‘independence’, especially in the colossal private enterprises and factories. The Anglo-Iraq treaty ensured British control of the most important economic sites of production and trade in the country. As I have shown, the semi-colonial framework of an ‘independent Iraq’ created an atmosphere of racism that was common elsewhere in the Empire. Iraqi workers, like their counterparts elsewhere in the Third World, embodied the contradictions

¹⁰⁶⁴ See for example, Luis Eslava. and Sundhya Pahuja. “Between Resistance and Reform: TWAIL and the Universality of International Law,” 3(1) *Trade, Law and Development*, 103 (2011); B.S. Chimni. “Third World Approaches to International Law: A Manifesto,” *International Community Law Review* 8: 3-27, (2006).

of the capitalist system within the (semi) colony, experiencing first hand the effects of imperialism and racism in their everyday lives, and so it should not be surprising that they would lead a significant role within the nationalist liberation movement.

Iraqi workers reconstituted the question of labour as an anti-colonial and anti-imperial one. This is why their rejection of the Anglo-Iraq treaty was a rejection of the entire international legal and economic order imposed on the region. Fahad reveals the way the workers were thinking when he wrote: ‘... the working class did not separate the national [political] from the social [economic] content of liberation...[For them] national liberation is but a starting point of a fundamental change in the life of the people’.¹⁰⁶⁵ The Iraqi labour movement *combined* claims of higher wages and better living conditions with anti-colonial demands of national liberation, ensuring its ‘full integration into the national movement’.¹⁰⁶⁶ This wide analytic lens was unique to the international conjuncture in question. It was prevalent at the time in other parts of the Third World.¹⁰⁶⁷ Furedi characterized this conjuncture as a ‘radical moment in anti-colonial politics,’ where there was a ‘tendency of protests to acquire a more fundamental anti-systemic and anti-imperialist orientation, accompanied by increasing erosion of the boundaries between economic and political demands.’¹⁰⁶⁸ This explains how ‘relatively ordinary demands could mushroom into a major challenge to imperial authority’.¹⁰⁶⁹ Iraqi workers, therefore, were unable to articulate their rejection of their social, living and working conditions without at the same time rejecting the entire international legal and economic order that was imposed upon them.

The British came to the conclusion that there needed to be an extensive development policy towards labour that would ‘ameliorate the dire labour conditions’ and ‘fend off Communism’.¹⁰⁷⁰ It is revealing that before the eruption of the *Wathba*, the British were in the process of advising the Iraqi government in drawing up ‘regulations for the whole field of labour in Iraq’ and the establishment of an arbitration procedure that would address workers

¹⁰⁶⁵ Batatu, *supra*, ft. 41, at 589.

¹⁰⁶⁶ Farouk-Sluglett and Sluglett. “The Social Classes and the Origins of the Revolution,” in Fernea and Louis (eds.) *The Iraqi Revolution of 1958: The Old Social Classes Revisited*, (London: IB Tauris, 1991), at 127-128.

¹⁰⁶⁷ Walter Rodney. *How Europe Underdeveloped Africa*, (Washington: Howard University Press, 1981), at 276.

¹⁰⁶⁸ Furedi, *supra*, ft. 1046, at 38.

¹⁰⁶⁹ *Ibid.*

¹⁰⁷⁰ TNA. British Embassy to Baghdad, to Rt Hon E. Bevin, Foreign Secretary, London, 2 July 1946, street demonstrations in Baghdad [FO 371/52406].

grievances.¹⁰⁷¹ It is this ultimately unsuccessful policy of development and conciliation that dominated British policy towards the region in the next decade. In a similar vein, a development framework manifested within international law and its institutions. The International Labour Organization for example sent technical assistance missions to advise on labour and social issues in the Middle East. The ILO's technical assistance programs were conceived in the context of constricted notions of social and economic development with the aim of fighting the growing influence of communism.¹⁰⁷² Moreover, the 1961 *Declaration of the United Nations Development Decade* (GA Res. 1710) ensured that the effects of the 1960 *Declaration* would be limited in that it 'bound together decolonization and development with a firm yoke'.¹⁰⁷³ This maintained the subordination of society to the discipline of economics, and led to the continuation of the development of underdevelopment.¹⁰⁷⁴ Most importantly, this was what prevented the materialization of an alternative international economic order from the 'salt-water' decolonization that was won. In this way, the conjunctural shift did not ultimately produce the revolutionary changes sought after, whether it was within the international legal order or the Iraqi experience, where revolutionary processes were interrupted by a CIA-sponsored military coup in 1963.

X. Conclusion

The history of the *Wathba* recounted above is an illustration of how revolutionary action may be undertaken within a specific conjuncture to subvert the effects of the imperialism of international law. Although this affirms the transient and provisional nature of the foundations of international law, it is only in relation to the structures in question that agency could be evaluated.¹⁰⁷⁵ It is nevertheless important to recall Gramsci's warning that 'a common error ... consists in an inability to find the correct relation between what is organic and what is conjunctural. This leads to... [either]... an excess of "economism" ... [or] ... an excess of "ideologism"'. In the first case there is an overestimation of mechanical causes, in the second an

¹⁰⁷¹TNA. D.L. Busk, Baghdad, to Rt Hon E. Bevin, Foreign Secretary, London, 21, August 1946 [FO371/52456].

¹⁰⁷² Maul, D. "The Morse Years: the ILO 1948-1970," in *ILO Histories: Essays on the International Labour Organization and its impact on the World during the Twentieth Century*, (Bern: Peter Lang, 2010), at 54.

¹⁰⁷³ Pahuja. "Decolonization and the eventness of international law," in Fleur, John; Joyce, Richard; Pahuja, Sundhya (eds.), *Events: The Force of International Law*, (London: Routledge, 2011); at 99.

¹⁰⁷⁴ *Ibid.*

¹⁰⁷⁵ Susan Marks. "False Contingency," (2010) 62 *Current Legal Problems* 1–22, at 10.

exaggeration of the voluntarist and individual element.¹⁰⁷⁶ It is necessary in the end to find an accurate correlation between the (organic) structure and (conjunctural) agency in one's analysis if one is to correctly evaluate how agency was (or is to be) deployed *within* the structural constraints of the international legal, political and economic order. It was after all, on the one hand, the overly weak hegemony of the Iraqi state and its corresponding semi-peripheral sovereignty that made it unable to maintain itself or permanently suppress the emerging counter-hegemonic movements and spaces that continued to arise despite being fractured again and again by the violent uses of emergency law. The counter-hegemonic, on the other hand, cannot be understood in isolation of the conditions that make agency possible or at least that make even an initially unsuccessful attempt at revolution, such as the *Wathba*, encompass the revolutionary seed and have a long-term effect on the future than was expected.

The prominent Iraqi poet Mohammed Maḥdī al-Jawāhirī recited a celebrated poem eulogizing those who died on the bridge during the *Wathba*, his brother amongst them. He begins with the following line: 'Are you aware or not, that the wounds of martyrs are a mouth?'¹⁰⁷⁷ It is not only a matter of allowing this 'mouth' to speak in one's scholarship, but rather to focus on the very conjunctures that allow those who take action to liberate themselves to become 'wounded martyrs'. It is, in other words, the opening (or 'mouth') of the conjunctures that should be one's point of departure.

¹⁰⁷⁶ Gramsci, *supra*, ft. 295, 178.

¹⁰⁷⁷ Jayyusi, Salma Khadra. *Trends and Movements in Modern Arabic Poetry*. (Leiden: Brill, 1997). 199.

Conclusion

While they bring glad tidings
Of the free world, to the slaves
And of the miracles
Of their dollar – the hope of the peoples –
And the giver of life to the dead.
They frighten mothers
And they soak
The banner of your people, my little one, with blood.

...
While behind prison walls
A great people awakens
Destroying its chains, my beloved son,
But you are busy and you do not answer.¹⁰⁷⁸

~ ‘Abd al-Wahhāb al-Bayātī

Mr. Speaker, the reports out of Iraq these days make 2008 sound an awful lot like 1930. That’s when the British strong-armed a so-called treaty to take control of Iraq’s oil wealth. And it remained that way for decades until the people in the Middle East nationalized their oil wealth to end outside control. But western oil interests and the neocons have wanted it back ever since... [They] want... [Iraq’s oil reserves]... just as they did 78 years ago. And like 1930, they plan to permanently occupy Iraq... In 1930, they didn’t call it occupation, they called it a treaty. And they are doing it all over again.¹⁰⁸⁰

~ Jim McDermott

I. The lines of expansion & contraction of the international legal order

To return to the image of drawing ‘lines’ on maps made in the introduction, this legal history of Iraq is a history of lines: borderlines, property lines, oil pipelines, railway lines, ports leading shipping lines...etc. As Cornelia Vismann suggests, the law is itself a line or rather, ‘the primordial scene of the *nomos* opens with drawing a line in the soil...[the] very act [of which] initiates a specific concept of law, which derives order from the notion of space.’¹⁰⁸¹ This study

¹⁰⁷⁸ ‘Abd al-Wahhāb al-Bayātī, [“A Song for my Son ‘Ali” dated 1955] in *Al-Majd lil-Atfāl wal-Zaytūn*, 3rd ed. (Cairo: Dār al-Kātīb al-‘Arabi lil-Tibā‘ah wal-Nashr, 1967), 49-51.

¹⁰⁸⁰ US Congressional Record, House of Representatives, July 9, 2008, H6315. McDermott was referring to the US-Iraq Status of Forces Agreement signed in 2008.

¹⁰⁸¹ Cornelia Vismann. “Starting from Scratch: Concepts of Order in No Man’s Land” in Bernd-Rudiger Huppau (ed) *War, Violence and the Modern Condition*. (Berlin: Walter de Gruyter, 1997), at 46.

shows how the straight lines of the law in all its scales –international, domestic, transnational, imperial, semi-colonial– produced and defined certain spaces with the aim of controlling, regulating and exploiting the strategic sites and the natural resources of the semi-peripheral Middle East. The Iraqi state itself was established through an amalgamation of legal instruments, doctrines and methodologies until it was, contrary to reality, proclaimed as independent. The retracing of these straight lines of the law exposes how imperialism operated to obscure reality, legitimate and expand its order.

This study however also shows that no matter how straight a line is drawn and no matter how sophisticated a ruler is used to (violently) draw a line, it could never dominate a map or surface, which already contains other free-moving, living lines. Tim Ingold, who has written a fascinating anthropological history of lines, describes the sovereignty of the straight line drawn by a ruler. He writes, ‘[a] ruler is a sovereign who controls and governs a territory. It is also an instrument for drawing straight lines. These two usages...are closely connected. In establishing the territory as his to control, the ruler lays down guidelines for its inhabitants to follow. And in his political judgments and strategic decisions –his ruling- he plots the course of action they should take. As in the territory so also on the page, the ruler has been employed in drawing lines of all kinds.’¹⁰⁸² The analogy above is apt indeed: to draw straight lines is the prerequisite for imperial control, but to do so you need a ‘ruler’. You need the law. The British at the behest of international legal institutions drew straight lines on the maps of Iraq and the region – they installed a ruler in Iraq and with the lines of the law developed a semi-peripheral sovereignty over this strategic territory, while they maintained their economic interests by drawing more lines – economic lines of capitalism (physically constructing the infrastructure of oil pipelines and railway lines).

Ingold contrasts the drawing of straight lines using a ruler with drawing by freehand, which he shows produces a life-like texture and contains an open-ended freedom as it is a movement along ‘a path of observation’ rather than the already defined sharp edges of the ruler.¹⁰⁸³ The graceful lines of anti-colonial and anti-imperial agency –of the workers, students, peasants, squatters, lawyers, and the multitudes – described in this study move in such a freehanded manner as they struggle to disentangle themselves from the sovereignty of (imperial and legal) straight lines. As they move, partly in an improvised and partly in an organized

¹⁰⁸² Tim Ingold. *Lines: A Brief History* (London: Routledge, 2007), at 160.

¹⁰⁸³ *Ibid*, at 166.

manner, they created their own alternative *nomos* with their very movements, with the aim of contracting the imperialism of the existing international legal order. The analysis of the international conjuncture in international legal history presented in this study could accordingly be considered as a science of the lines of imperial and anti-imperial movement – their coordination in relation to space and time, and their expansion and contraction. It is no doubt the most useful method to understand the manifestation and initiation of agency, and its counter-hegemonic spaces in relation to the structures of capitalism, imperialism and international law.

This dissertation makes several contributions to the existing literature that go beyond just putting law at the center of the modern history of Iraq. First, it substantiates the unique specificity of the semi-peripheral region of the Middle East in the history of international law. In other words, it shows that international law approached the semi-periphery quite differently than it did the periphery in the Third World. From this emerged new juridical formations of sovereignty in international law, such as what I describe as semi-peripheral sovereignty. These new categories were in fact attempts to conceal the reality of imperial control, colonialism and capitalist exploitation of the region. They were also threaded specifically for the Middle East, considering its important geo-strategic location in the globe, as well as, the valuable natural resources below its ground. By exploring these unique legal techniques and formulations and their ensuing effects, international legal scholars would better appreciate the different (subtle) ways in which international law was deployed to obfuscate reality and to further imperial agendas. It is these hidden structures of the imperialism of international law that are most interesting to study as their deconstruction would ensure that they would not reemerge again. It would also add to the lesser known histories and genealogies of the concept of sovereignty in relation to the Third World. Secondly, this study contributes to the study of agency in relation to international law by proposing that with the use of a novel methodological approach relying on the conjuncture, the history of agency could be better grasped within international legal history. A broader and more open perspective towards the agency of the ordinary peoples of the Third World illustrates, not only that international law had a concrete material effect on those living under its guise, but that their struggles against these forms of control were a significant part of its history, and should be considered as such.

II. The juridical forms of sovereignty in international law & their relation to capitalism and imperialism

I have recounted this history of Iraq not only to show that the law was continuously present in the political and socio-economic transformations of the period in question, but particularly as an attempt to present a historical case whereby it is clear *how* imperialism and international law are *constitutive* of each other. Of course, this study is not only a history of international law and its institutions (Chapter 3 & 7), but also an illustration of the simultaneous operations of (British) imperial law (Chapter 1), transnational law (Chapters 3 and 4), emergency law, criminal law (Chapter 6), and labour law (Chapters 2, 4 & 5). Nonetheless, it was generally with the structures of international law and the construction of semi-peripheral sovereignty in Iraq through the Mandate process that these laws above had the necessary scope to function within the context of semi-coloniality. Moreover, it was international law, through the provisions of the 1930 Anglo-Iraq Treaty, which produced and maintained the spaces – the imperial and semi-colonial enclaves of the oil fields, railways and the port – described in this study, that allowed for imperialism to function efficiently and maintain the flow of capital in this geo-strategic region.

The making of semi-peripheral sovereignty in Iraq was a significant event in that it was the first time that the necessary juridical ingredients were weaved together to produce a unique non-European sovereignty through the Mandate process of international law that was reconciled with the post-war international legal order, and yet preserved the essential processes of imperialism in the region. As I have shown, there was a spatial and economic specificity to the semi-periphery that made these legal techniques vital for controlling the region as a whole. Furthermore, from a regional and international perspective, this experiment with sovereignty was valuable in that it revealed how far a restrained non-European sovereignty could be overextended without contradicting the main principles underlying the emerging international legal order.¹⁰⁸⁴ Semi-peripheral sovereignty in Iraq was in essence a skeletal form of sovereignty that ensured that Iraqi sovereignty was (in theory) complete under international law, but fragmented in reality – a fragmentation that was evident in the autonomous and semi-autonomous enclaves (of the oil fields, the port and the railways) that were described in the study, and which also included the two British (RAF) military bases that remained stationed in Iraq.¹⁰⁸⁵

¹⁰⁸⁴ I have shown that the legal arguments made by the PMC did at times contradict their own legal principles (especially of the open door), but the point is that the appearance of reconciliation with international legal doctrine was ensured.

¹⁰⁸⁵ British enclaves were spread out throughout the region (in Egypt, Iran, and the Persian Gulf states). William Roger Louis recounts Oliver Harvey's account in his diaries after visiting the RAF

At its crux this study therefore uncovers the constitutive relation between the juridical forms of sovereignty and capitalist expansion through imperialism in the region. By tracing the economic dimensions of Iraqi semi-peripheral sovereignty and its link to the open door principle, I show exactly how these forms and processes were molded to further the commercial and economic interests of the imperial powers and capitalism in general. A close reading of the PMC discussions on Iraq's readiness to be independent, with those concerning the oil concessions, and in turn with the pipeline agreements with the other Mandates in the region, suggests that the juridical forms embedded in Iraqi semi-peripheral sovereignty were in fact a juridical manifestation of the expansion and reproduction of capital in the region. I am hence furthering the argument that sovereignty, as a core concept of international law, has a constitutive correlation with capitalism and its imperialism. Sovereignty was in other words, *not* primarily 'forged out of the confrontation between different cultures,' which in turn produced the 'dynamic of difference,' but rather it was already embedded in the juridical forms of capitalism.¹⁰⁸⁶ It is the economic rather than the cultural dynamics of sovereignty and international law that should be underscored in its history. The grasping of the doctrine of semi-peripheral sovereignty and its processes in Iraq would, it is hoped, explain its enduring characteristics, its continuities, and in turn its (current) limitations as a category for Third World states in a post-colonial world.

This historical and legal study of Iraq therefore substantiates China Mieville's claim that, 'the imperialism of international law means more than just the global spread of an international legal order with capitalism – it means that the power dynamics of political imperialism are embedded within the very juridical equality of sovereignty.'¹⁰⁸⁷ The socio-economic transformation of Iraq described here is an illustration of how the legal form of 'equality' within the concept of sovereignty, as it was entrenched in the Anglo-Iraq Treaty, was used not only to uphold its military dominance there, but also to maintain its corresponding capitalist structures and processes, ensuring its operation with a certain efficacy. While capitalist relations were solidified within Iraqi society as we saw in Chapter 1, they were maintained within the industrialized spaces of oil production, railway and port apparatuses, as detailed in Chapters 4 and 5. By exposing the effects of the juridical forms of semi-peripheral sovereignty and how Iraqi

bases in Iraq during the Second World War, describing them as, 'a complete bit of England abroad....football, cinema and a pack of hounds. All very Poona.' Quoted in William Roger Louis. *The British Empire in the Middle East, supra*, at 745.

¹⁰⁸⁶ Anghie, *supra*, ft. 21, at 311.

¹⁰⁸⁷ Mieville, *supra*, ft. 25, at 270.

workers were materially affected by these structures, not only does this study strive to further ground the history of international law, but in its explicit consideration of anti-colonial and anti-imperial (labour) struggle, it aims to move bottom-up to insert the agency of Third World peoples into its historiography. The hope is, as Upendra Baxi proposes, ‘international law [would no longer] be further understood merely as the history of the *law of nations* to the entire exclusion of the *law of peoples*.’¹⁰⁸⁸ The actions of Third World peoples would finally be interpreted from the perspective of international legal transformation rather than its exclusion from this realm.

III. Legality as a question of strategy and tactics in revolutionary struggles

One theme running throughout this work concerns the manner that counter-hegemonic movements appropriated and referred to the law and its language in their struggles. In Chapter 2, I show how the labour movement was able to appropriate the (dead) labour law of 1936 on the books for its own advantage, using it as a reference point in its demands. Although the early labour movement had confidence in the principles of international law and its institutions (as its leaders were in direct contact with the ILO for instance), its communist-led successor referred to the law (whether international law or the labour law of the state) only from the perspective of strategy and tactics. This did not mean that the law was unimportant for them, but rather they did not consider legal reform as sufficient for defeating the structures of the semi-colonial order and ending British imperialism in the country.

The oil workers relentlessly referred to the 1936 labour law in making their demands, in particular the formation of its independent trade union. However, they were aware of the limitations of the law and its application, were due to the constricting structures of international and transnational law imposed on their country. Their experiences after the Gāwūrbāghī strike and massacre confirmed their views, as not one person was held accountable under Iraqi law for the murder of oil workers. Similarly, the port workers explicitly fought for the inclusion of the right to strike into the labour law, which they argued was a part of their natural rights as workers. These legal demands went unanswered and the workers were forced to move to more militant tactics of wild strike action and sabotage during the *Wathba*. The uses of law in the struggle had some advantages (whether as rhetorical tool or for its educative function), but it definitely had its

¹⁰⁸⁸ Upendra Baxi. ‘What may the “Third World” expect from International Law’ *Third World Quarterly*, Vol. 27, No. 5, pp.713-725, 2006; at 720.

limits as the overall anti-colonial and anti-imperial struggle itself was waged outside the confines of law.

Does the law in general, then, and international law and its concept of sovereignty in particular, have an emancipatory potential for counter-hegemonic, anti-colonial and/or anti-imperialist movements? A central point that emerges from this study is that the practical usefulness of law depends entirely on the historical conjuncture in question. It is a matter of strategy and tactics and should not be pursued for the simple reason that it is law. Consequently, neither EP Thompson's claim that the rule of law is an 'unqualified human good' in its malleability as a recourse for the plebian, nor Guha's categorical renunciation of this statement as a reflection of the 'hallucinatory effects of ideology,' is accurate.¹⁰⁸⁹ As Pashukanis has emphasized, 'legality is not an empty sack that can be filled with a new class content'.¹⁰⁹⁰ In other words, the forms of (bourgeois) legality ensure its limited potential. Its usefulness, therefore, for any revolutionary movement is 'a mere question of tactics'.¹⁰⁹¹ International law, including human rights discourse, therefore is not always a useful 'counter-hegemonic tool of resistance' as several TWAIL scholars have argued.¹⁰⁹² The same could be said of the concept of sovereignty and self-determination, for despite its inherently imperialistic juridical form, it could, provided the historical conjuncture is taken into account, contribute to a revolutionary struggle. A legal demand, including that of complete self-determination, in other words, could be made to further its revolutionary struggle, and this study has revealed how the Iraqi labour and nationalist movements did exactly that at certain conjuncture

¹⁰⁸⁹E.P. Thompson, *supra*, ft. 183; and Ranajit Guha. *Dominance without Hegemony: History and Power in Colonial India*, (Cambridge: Harvard University Press, 1997), at 67. It should be noted that Doug Hay has clarified Thompson's often-quoted phrase: 'If it was anything, the rule of law was for Thompson an aspiration, a standard that could be used by democrats and socialists in upholding constitutional protections first imagined by radicals and then achieved by popular politics over a hundred of years...He was well aware that the law is also a basis of rules...upholding a radically unequal division of property...[T]hat critique was at the heart of his polemic journalism, and the other 250 pages of Whigs and Hunters...' 'Introduction to the Second Edition,' in Douglas Hay, Peter Linebaugh, John G. Rule, EP Thompson and Cal Winslow. *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, London: Verso, 2011), at xi.

¹⁰⁹⁰ Evgeny Pashukanis. "Lenin and the Problems of Law" in Piers Beirne & Robert Sharlet, eds. *Pashukanis: Selected Writings on Marxism and Law* (London: Academic Press, 1980), at 143.

¹⁰⁹¹ G. Lukacs. *History and Class Consciousness*, (Boston: MIT Press, 1990), at 264. For an examination of this question in detail see, Robert Knox. "Marxism, International Law, and Political Strategy", *Leiden Journal of International Law*, 22 (2009), pp. 413-436.

¹⁰⁹² Balakrishnan Rajagopal. "Counter-Hegemonic International Law: Rethinking Human Rights and Development as a Third World Strategy", 27(5) *Third World Quarterly* pp. 767-783.

IV. Conjunctural analysis & the writing of history for the present

It has already been mentioned that a conjunctural analysis of history in relation to agency is meant as a modus to grasp the *present* conjuncture (or in Lenin's 1917 expression, 'the Present Situation') so as to be able to formulate an organized plan of action today, which would be decisive. A conjunctural analysis, therefore, is not your typical analytic method for the academic, merely concerned with the elucidation of the historical past, but rather is meant to identifying strategic and tactical sites of political action today. So the reader may wonder what was the purpose of writing and undertaking a study and analysis on the revolutionary history of Iraq. Why for instance are the past struggles of the oil, railway, and port workers significant to recall? Why should we study their organized actions and strategies? How could the revolutionary history of the *Wathba* be useful for Iraqis today – in an age of US imperialism, and amidst the devastation of the 2003 invasion, occupation, plunder and disintegration of Iraq? The legendary history of the *Wathba* and the vast hopes that came with the 1958 July Revolution seem to hardly register in the memories for today's Iraqi youth – or if so are only considered as possibilities that were dashed by regional rivalries, left disorganization and imperialism – a too brief and turbulent revolutionary interlude filled with optimism that has long gone.

Although, I do not claim to have substantive answers to these questions, it is certainly clear that the *Wathba* was a decisive moment in the modern history of Iraq and that its effects reverberated beyond the 1958 revolution in many ways. As Hamit Bozarslan has argued the *Wathba*'s contemporary relevance in the post-1958 history of Iraq, including the Ba'thist period, and the region was that it was 'the bearer of an unprecedented degree of radicalization in the Arab world,' and that it was precisely the continuation of this process well after 1958 that 'created a paradoxical situation and led to a radical bifurcation both in ideological and axiological terms'.¹⁰⁹³ This 'radical bifurcation' in ideology between Iraqis who were staunchly anti-imperialist and favored concrete independence and non-alignment, and those who favored a connection with the West became permanently entrenched, stirring continuous tension, and this arguably remained in place throughout the history of Iraq and the region to this day.

¹⁰⁹³ Hamit Bozarslan. "Rethinking the Ba'thist Period" in Jordi Tejel, Peter Sluglett, Riccardo Bocco, Hamit Bozarslan (eds.), *Writing the Modern History of Iraq: Historiographical and Political Challenges* (Singapore: World Scientific Publishing), at 144.

It is apparent then that without undertaking a re-examination of the past with the present in mind, it would be difficult to act to reconstruct an alternative future for the benefit of Iraq. It is in this way that one should recollect how Iraqis developed creative and resourceful ways of organized resistance in their struggles against imperialism and its legal manifestations. What emerges therefore from this legal and historical study of Iraq is that ordinary working class Iraqis were able to see through the obfuscation of the legal structures imposed on their country and at certain points in time organized successfully against them. The reality is that these experiences remain deeply (even if subconsciously) ingrained in the collective memories of the masses of the region, and we know this because they tend to reemerge without any warning as we saw happen during the 2011 Arab revolutions. Ordinary Iraqis continue to struggle against similar imperialist legal structures, organizing in novel ways, despite their portrayals by the media as passive victims of dictatorship and war.¹⁰⁹⁴ The oil workers and their contemporary unions, for instance, undoubtedly following their militant tradition, were (and still are) at the forefront of an intense struggle against the imposition of an oil law in 2007, which intends to entirely open the oil industry to foreign investment, sanctioning the interests of foreign companies (with the help of international investment law), and completely reversing the process of nationalization that started in 1972.¹⁰⁹⁵

I want to end with a brief remark on the value and the techniques of writing history, especially of international law. Anne Orford has highlighted the uniqueness of the uses of the historical analysis by legal scholars, in particular TWAIL scholars.¹⁰⁹⁶ She argues that legal scholars do not abide by the established methodology of historiography that rejects all forms of anachronism, emphasizing that everything should be placed ‘in the context of its own time.’¹⁰⁹⁷ Historians on the other hand are expected to solely recover ‘past meanings’.¹⁰⁹⁸ Orford suggests that since law is inherently genealogical, depending on ‘the movement of concepts, languages and

¹⁰⁹⁴ See Ali Issa. *Against All Odds: Voices of Popular Struggle in Iraq*, (Tadween Publishing, 2015).

¹⁰⁹⁵ See Greg Muttitt. *Fuel on the Fire: Oil and Politics in Occupied Iraq*, (London: Bodley Head, 2011). Muttitt details the current struggles of the oil union and Iraqi civil society in organizing against this law. On one of their strikes, he refers to their past militant history and experiences, ‘The new oil union continued this tradition [i.e. of the communist-led strikes of the 1940s and 1950s and the spirit of Gawurbaghi], demanding immediate improvements for the workers while raising the long-term structure of the industry and the economy,’ and an opportunity to have a say on the new oil law. Muttitt, at 254.

¹⁰⁹⁶ Orford. Anne. “The past as law or history? The relevance of imperialism for modern international law,” IILJ Working Paper 2012/2 (History and Theory in International Law Series), Finalized June 2012, (www.iilj.org).

¹⁰⁹⁷ *Ibid*, at 6

¹⁰⁹⁸ *Ibid*.

norms across time and even space,' legal scholars are intuitively capable of breaking from this hallowed method through contextualizing past concepts, and considering how these concepts reemerge in the present.¹⁰⁹⁹ In other words, legal scholars find it easier to use history and the past within the present context, and they do not abide by any stringent method.

Although, Orford is correct in pointing out the affinity between law and history, and the constructive role of legal analysis in historical methodology, not all historians abide by this orthodox approach to historiography. In fact, many historians, especially of the left, see their craft as corresponding to the study of political action and its relation to the present. The writing of history is considered as a political act – the *making* of history and its production is therefore a technique to respond to the present, and is firmly rooted in the 'possibilities of making futures.'¹¹⁰⁰ Walter Rodney, for instance, believed that history was 'a way of ordering knowledge which could become an active part of the consciousness of an uncertified mass of ordinary people' and utilized as 'an instrument of social change' to bring about an alternative future.¹¹⁰¹

David Scott suggests a similar view in his rereading of *The Black Jacobins*, C. L. R. James's classic account of the only successful slave rebellion in the Caribbean, the Haitian Revolution of the 1790s¹¹⁰²: 'The historical past', he writes, '...is never anachronistic [...] [T]he past is [not] only available through the present [...] but [...] morally and politically what ought to be at stake in historical inquiry is a critical appraisal of the present itself, not the mere reconstruction of the past. The present, then, not the past, is what histories of the present are supposed to be about.'¹¹⁰³ In this way, Scott considers James's classic work as an 'exercise in writing a history of the present,' suggesting that James 'directly challenges us to ask ourselves what kind of story might be best for the politicohistorical presents within which we now live and

¹⁰⁹⁹ *Ibid*, at 9. The methodological affinity between law and history in European thought could be traced back to at least the sixteenth century. François Baudouin and Jean Bodin, for example, argued that the jurist must be a historian, if he is to avoid errors of interpretation and chronology, and the historian must be a jurist to set events in their proper political and social contexts. See Grafton, Anthony. *What was History? The art of history in early modern Europe*, (Cambridge University press, Mass., 2007), at 69.

¹¹⁰⁰ Bill Schwarz. "'The people' in history: The Communist Party Historians' Group, 1946-56," *Making Histories: Studies in history-writing and politics*, Johnson, R. ed. (Hutchinson & Co, 1983), at 95.

¹¹⁰¹ George Lamming's 'Forward' in Walter Rodney. *A History of the Guyanese Working People, 1881-1905*, (John Hopkins University Press, London, 1981), at xvii

¹¹⁰² C.L.R. James. *The Black Jacobins: Toussaint L'Ouverture and the San Domingo Revolution*, (NY: Vintage, 1989).

¹¹⁰³ David Scott. *Conscripts of Modernity: The Tragedy of Colonial Enlightenment*, (Durham: Duke University Press, 2004), at 41

write.’¹¹⁰⁴ It is revealing that James was, despite his silence on his initial intentions, it has been argued, motivated to begin writing *The Black Jacobins* when he arrived in London from his native Trinidad, by the US occupation of Haiti (1915-1934).¹¹⁰⁵ He was consciously weaving together a particular and romantic history of the Haitian revolution, while meditating on the underlying revolutionary potential of Africans and the people of the Caribbean, indirectly addressing the US imperialism of his time, and its flaunting of Haitian sovereignty. His hope it seems was to inspire revolutionary action in the imaginations of the Caribbean people, and to historically connect the Caribbean anti-colonialism against US imperialism *with* the revolutionary struggle of Toussaint L’Overture and the Haitian Revolution for black liberation. It was therefore no coincidence that his classic study of revolution was written and published during that period, in 1938.

It is with a similar spirit that this history was written: as a (dare I say, romantic) reworking of the history and legacy of anti-colonial revolutionary struggle of Iraq *for* this present conjuncture of US imperialism, following the 2003 invasion, occupation and domination of Iraq, the devastating effects of which linger to this day. I would like to think that the conclusion of this study on the year of the centenary of the 1917 October Revolution (which is the same year of the British occupation of Iraq) is a nod to this effort.

The British Ambassador to Iraq, John Troutbeck, once wrote in a dispatch that ‘no country could owe more to imperialism than does Iraq’. One should add that the imperialism that he was referring to was more specifically the imperialism of international law that we have detailed in this study. Iraq’s experience with international law and its institutions could be said to be quite unique. It was a state that was established and granted ‘independence’ through the mechanisms of the Mandate system and international law, so as to be exploited in ‘peace’ (‘an organization without occupation’ as one member of the Indian civil service put it¹¹⁰⁶). It would later be the target of foreign-backed coups, installed dictatorship, acts of war, bombs, economic sanctions, invasion, plunder, looting and military occupation – all with the aim of its re-integration into the capitalist world economy and its subjugation into Western hegemony. Iraq’s modern state and its institutions – once the pride of the international community of the interwar

¹¹⁰⁴ *Ibid*, at 57

¹¹⁰⁵ See Raphael Dalleo. ‘“The Independence So Hardly Won has Been Maintained”: C.L.R. James and the U.S. Occupation of Haiti,’ *Cultural Critique* 87, Spring 2014, pp. 38-59.

¹¹⁰⁶ See Olaf Caroe. *Wells of Power: The Oilfields of South-Western Asia, A Regional and Global Study*, (London: Macmillan & Co, 1951).

period – first developed through the mechanisms of international law, would be entirely destroyed seven decades later, all under the purview of the *same* international legal order. This may seem paradoxical indeed, but this study indicates otherwise. International law as the juridical manifestation of imperialism is predicated on ‘civilizing’ violence. What is clear is that if Iraq were to ever gain its full independence and its people their freedom, the entire semi-peripheral region of the Middle East (including and especially Palestine) would have to be liberated from the shackles of imperialism and this certainly means the imperialism of international law.

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