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Reparations for U.S. War Crimes Against Iraq

Abstract: *Given the basic tenets of just war theory and those of United States law regarding compensatory justice, it is argued that the U.S. invasion of Iraq from 2003-present is morally unjust and that the U.S. owes substantial reparations to Iraq.*

Key words: *Compensatory justice, Iraq, Just war theory, Reparations, United States, War crimes.*

Introduction

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I shall argue that, given the plausibility of some of the basic tenets of just war theories, the U.S. invasion and occupation of Iraq is morally wrong, and that those most directly and strongly responsible for it deserve to be punished in approximate proportion to their harmful wrongdoings related to this human rights atrocity.¹ Furthermore, the U.S., which is most directly responsible for such war crimes, owes substantial reparations to Iraq for the damages it has violently wrought on that nation.² This is not to deny that certain other countries owe reparations to Iraq for their service as contributory causes to the invasion and occupation thereof. However, my focus shall be on the major culprit of that continuing evil state of affairs.

Implied in this argument is the idea that those who have the authority and influence to prosecute or to have prosecuted those who are accused of war crimes are morally inept and stand blameworthy for their not serving the aims of justice. This would include current U.S. president Barack Obama, who repeatedly refuses to initiate or even encourage the prosecution of the primary agents of the previous U.S. presidential administration, and this after he campaigned in part on the claim that such crimes ought to be prosecuted. His since stated reasons for not looking backward include his wanting to look forward in order to address immediate concerns, ones that he implicitly believes are more important than doing justice for hundreds of thousands of innocent Iraqis killed by U.S. soldiers at the

1 I am grateful to the audience at the Institute for Philosophy and Social Theory, University of Belgrade, for helpful comments on an earlier draft of this paper. I am also grateful to the Editors of *Philosophy and Society* for their incisive comments on this article.

2 For a philosophical account of war crimes that emphasizes a humanitarian rather than a justice-oriented approach, see May 2006.

order of Obama's predecessor. Presumably, another reason is that Obama does not want to risk the political fallout from such a trial. Again, if this is his reasoning, he is placing a greater value on the "peace and stability" of a country that has perpetrated a significant measure of genocide on Iraq for several years over the victims of Iraq's genocide.

In addressing the question of war crimes against Iraq, the following questions must be answered: On what grounds is the invasion and occupation of Iraq morally wrong? Who is primarily responsible (liable) for it? What are the damages owed that have accrued from the harmful wrongdoings? And what are the appropriate punishments or penalties for those significantly responsible for it? Finally, what, if any, reparative compensation might be owed to the victims of U.S. aggression against Iraq? All the while, we must bear in mind John Kleinig's words that "war-time atrocities may lead us to revise our ideas about human depravity and the severity of punishments which can be acceptably inflicted."³

194 I make several assumptions. First, while the post World War II International Military Tribunal failed to list the declaring of an unjust war as either a war crime or a crime against humanity, I shall assume that it falls under the latter category, if not the former one. Moreover, I assume that the many quandaries that plague proportionalism in punishment discussed in recent years by Michael Davis, Andrew von Hirsch, Jesper Ryberg⁴ and many others do not significantly effect my rather underdetermined sentencing proposals for such war criminals. For while my proposed punishments might be criticized by some for not constituting proportionately stronger punishments, they are nonetheless quite strong compared to some historical cases of prosecuted war crimes. Moreover, the problems associated with proportional punishment more generally do not rule out the possibility that we can "get it (reasonably) right" in this or that particular case of punishment. I also assume that the moral agents in question have both significant power to effect change in U.S. foreign policy, and that they genuinely had the ability to do otherwise than what they did in the circumstances in question. Or, at the very least, I make the compatibilist assumption about moral responsibility that even if they lack the ability to do otherwise and do not satisfy the principle of alternative possibilities,⁵ they at least satisfy the sufficient condition of acting with higher-order volitions⁶ in the invasion and occupation of Iraq. In other words, I assume that those persons under discussion in terms of punishment or compensation are significantly morally responsible in the retrospective liability sense for that of

3 Kleinig 1973: 124.

4 Ryberg 2004.

5 The principle of alternative possibilities states that it is a necessary condition of moral responsibility that an agent have the ability to do otherwise than what she did, failed to do, or attempted to do, as the case may be at the time that she performs the act, omission, or attempt.

6 Frankfurt 1988.

which so many throughout the world accuse them. I also assume that the institution of punishment, though fallible, is itself morally justified. And I assume that capital punishment is among the harshest of punishments that can legitimately be inflicted on robustly responsible humans duly convicted of the worst crimes possible, such as crimes against humanity and severe war crimes. With these and some further related assumptions in mind, I shall now focus on the matters of establishing the *prima facie* liability responsibility for severe harmful wrongdoings to Iraqis and who should be punished for them, and how.

It is important that I steer clear of some major problems in responsibility theory. One is that of collective responsibility ascriptions, especially in times of war. As Sanford Levinson cautions, “Great difficulties emerge when one considers the question of criminal responsibility for actions occurring within an organizational context.”⁷ He goes on to argue that “If one wants to preserve the force of the notion of war *criminality*, he must find discrete criminals or else argue that in fact everyone is guilty and deserving of punishment.”⁸ I adopt the first strategy, and seek to identify some of the various individuals most directly and strongly responsible for the unjust military invasion and occupation. In doing so, I remain consistent with the idea that U.S. government officials most closely aligned with the invasion and occupation will be judged according to their behavior that intentionally, knowingly, and voluntarily caused these states of affairs. While due process will have to determine whether or not such officials are deserving of punishment for their degrees and kinds of responsibility for the invasion, I shall base my attributions of responsibility on the rather commonly known media statements that many of the accused have made for the past several years. Thus the morally odious practice of strict liability is avoided. And here the distinction between line and staff officials is crucial.⁹ I am concerned with those officials who are the most powerful and least able to claim, like Nazi military officers during the post-World War II war crimes tribunals, that they are exempt from responsibility because they are simply “following orders.” I am mostly concerned with those having the most authority or role responsibility and who are most able to effect change in regard to the Iraq case, and their respective kinds, levels and degrees of liability for wrongful harm to Iraq.

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Why the U.S. invaded and occupies Iraq

On 10 October 2002, the U.S. Congress granted power to the U.S. president to declare war, ostensibly because former Iraqi leader Saddam Hussain committed human rights violations and must be punished for them (which he was), because Iraq posed a security threat to the U.S. in that it possessed weapons of mass destruction, and because Iraq supported terrorism against the U.S.. These constitute

7 Levinson 1973: 246.

8 Levinson 1973: 251.

9 Levinson 1973: 259–260.

the official reasons for the commencement of “Operation Iraqi Freedom” on 19 March 2003. This is not to deny that there exist, contrary to the admission of U.S. officials, yet other reasons for the invasion.¹⁰

Now let us consider these reasons for invading Iraq. For if such arguments are reasonable all relevant things considered, then the punishment of war crimes would not apply to the very declaration of war by the U.S. so much as to the processes of the conflict. But if the reasons given for invading Iraq fail to justify it on moral grounds and if there are indeed inadequate moral grounds for the invasion of Iraq by the U.S., then not only the conduct during the invasion and occupation are condemned and must be punished, but so must the very act of declaring the “war” in the first place.

196 As noted, the then U.S. president and his administration gave as one of its reasons for invading Iraq that Iraq possessed either weapons of mass destruction, or the essential elements for producing and using them. This point is meant to support the idea that Iraq poses a serious threat to U.S. security. Much of the claim revolved around the assertion made repeatedly by Bush administration officials and even in the National Intelligence Estimate, deemed dubious by many of us back then and now known by even many Bush supporters to be specious, that Iraq obtained some of the elements to manufacture weapons of mass destruction from an African country. Even if true, why this is a good enough reason for the violent invasion of a sovereign nation is morally puzzling, especially in light of the fact that every country or nation in the world needs protection against the U.S. given *its* long train of domestic and international human rights violations since its very inception and given *its* use of weapons of mass destruction since the World War II era. Even so, let us continue to consider the U.S. case for the invasion of Iraq even though no weapons of mass destruction were found in Iraq prior to the invasion and even to this day.

A related reason given for the invasion of Iraq focused on Hussain. President Bush, vice-president Cheney, secretary of defense Rumsfeld, secretary of state Rice, and former secretary of state and chairperson of the Joint Chiefs of Staff Powell, head of homeland security Tenet,¹¹ among others, argued vociferously and repeatedly

10 It is recently argued that the “Israel lobby,” a loose coalition of pro-Israel political groups exerts an undue influence on U.S. politics, including on the decision to invade Iraq (Mearscheimer and Walt 2007). While the authors make a compelling case in favor of the claim that such a lobby is in part responsible for the U.S. invasion and occupation of Iraq, this fact does not supplant the proposition that one of the other primary contributing factors for this human rights atrocity is also the desire to thief Iraq’s oil, contrary to their vague and weak arguments against the oil thesis (Mearscheimer and Walt 2007: 254–255).

11 George Tenet called the evidence for Iraq’s possession of weapons of mass destruction a “slam dunk,” when in fact it is to this day rather weak at best.

that Hussain was a human rights violator and must be stopped. But surely if the evidence could be adduced to support the U.S. claim concerning Hussain, then the U.S. could have brought the evidence to the International Criminal Court and had Hussain tried for human rights violations. After all, it is not as if the U.S. has never used its military, political and economic power to affect its will over such institutions. But why not settle for an elaborate search and capture mission that it's most elite navy seals could have effected (and did effect) in securing Hussain instead of a military invasion of grand proportions?

The U.S. also insisted that Iraq was linked to anti-U.S. terrorism, another claim that was never adequately substantiated and was eventually retracted by even the Bush administration itself. It also assumes that, even if the claim were true, that the U.S. government is not the legitimate target of terrorism in part because it has engaged in state terrorism against not merely a few countries during the past few decades alone. Such moral presumptuousness is what prevents most U.S. citizens from understanding the genuine reasons for terrorism against the U.S.. Indeed, most U.S. citizens are ignorant of the possible causes of anti-U.S. terrorism (known to CIA agents as "blowback"), and its possible moral justification.¹²

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The inference to the best explanation for the U.S. invasion and occupation of Iraq includes one or more of the following: the U.S. thirst for oil to the point of outright theft by the killings of hundreds of thousands of innocent civilian noncombatants (that is, "noncombatants" until the U.S. military invasion of their sovereign nation at which time many sought to defend their homeland¹³), motivated by the Bush family's strong and long-term investments in oil, the embarrassment that the terrorism of 9/11 posed to the U.S. political leadership and its desire to create the illusion in the minds of U.S. citizens and others that the U.S. government is doing something in response to 9/11, and of course the official plans to invade Iraq crafted and adopted during the Clinton administration. Many believe that a Bush family vendetta against Hussain fueled the invasion, though I shall not give this point attention for reasons of charity. For even on a charitable interpretation, it is clear that the reasons given publicly for the invasion are morally dubious. Still others believe that the protection of Israel in the Middle East is important to U.S. interests in the region, a point that is disputed by some experts on U.S.-Middle East policy.¹⁴ Let us bear in mind that Osama bin Laden made it crystal clear that the primary reason for the 9/11 attacks to which the invasion and occupation of Iraq was a U.S. response was due to the U.S.'s support of Israel.

12 For discussions of these topics, see Corlett 2003: Chapters 5–6; Honderich 2004; Wilkins 1991.

13 As John Rawls states, "Decent peoples have a right to war in self-defense" (Rawls 1999: 92).

14 See note 10, above.

Was the U.S. invasion and occupation of Iraq morally justified?

Is the U.S. invasion and occupation of Iraq morally justified? As most just war theorists hold, some of the necessary conditions of *jus ad bellum* and *jus in bello* include¹⁵: (a) a prospective war's having a just cause; (b) its being declared by a proper authority; (c) its possessing a right intention; (d) its having a reasonable chance of success; and (e) its end being proportional to the means used. I challenge the idea that the U.S. had a legitimate reason or cause to invade Iraq. And I take this as uncontroversial now that members of the highest-level of the Bush administration admitted that the evidence it provided for the invasion was somehow or other "mistaken." And even if it is the case that the invasion was declared by a proper authority, and even if it were true that the intent of the invasion was not to steal Iraqi oil but something noble, and even if at the outset there was a reasonable chance of the invasion's success, one must also ask whether it was a justified proportional response to depose Hussain by invading Iraq. There is no good reason to think that the military invasion of Iraq was necessary for the deposing of Hussain, as he could have been tried by the ICC and Iraq could have been spared the killings of hundreds of thousands of its people, and the wounding of yet untold numbers of others, and the destruction of its culture. Surely an acceptable motivation for such an invasion must amount to something more than "getting rid of Hussain," as top U.S. officials often put it. And given that there were no weapons of mass destruction found, and that no evidence has been adduced to link the 9/11 terrorists to Iraq, part of the inference to the best explanation for the invasion is the theft of Iraqi oil by the U.S..

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Thus given the just war criteria noted, the U.S. invasion of Iraq fails to satisfy at least the just cause and proportionality conditions. And no egoistic appeal to the protection of U.S. interests will work, as it begs important questions concerning the moral legitimacy of such interests. As Alan Gewirth states: "War crimes are crimes. As such, they are evil actions of murder, rape, torture, and other violations of basic human rights. Persons who commit, or order the perpetration of, such evils deserve severe punishment."¹⁶ To this I add the claim that the declaring or starting of an unjust war is a war crime and deserves punishment that is quite severe as the destruction of war is typically such that it is rightly classified

15 John Rawls argues that "Well-ordered peoples, both liberal and decent, do not initiate war against one another; they go to war only when they sincerely and reasonably believe that their safety and security are seriously endangered by the expansionist policies of outlaw states" (Rawls 1999: 90–91). Rawls also notes that the right to go to war includes the right to defend one's allies (Rawls 1999: 91). For a statement of general just war doctrine, see Rawls 1999: 94–105.

16 Gewirth 2001: 48.

as evil.¹⁷ When hundreds of thousands of innocent people are killed, it is not merely a bad thing. It is evil, regardless of motive or intent, though it might not be pure evil which might well be called such because of its attending intent of the agent(s) most responsible.

It might be argued that the invasion of Iraq was morally justified in terms of nation-building, that is, insofar as it replaced an allegedly morally problematic non-democratic regime with a democratic one, and that democratic nation-building is so important in order to secure the basic rights of peoples that collateral damage of even innocent lives is morally permitted under such circumstances. Indeed, this is just the kind of thinking that was expressed by the Bush administration at the commencement of the invasion.

But this reason for the invasion of Iraq is problematic in multifarious ways. First, even if the U.S. rectified its evil past in order to avoid the moral hypocrisy attending its intervention into the affairs of another sovereign state, it is unclear that the hard paternalism inherent in such deposing of other governments that are not democratic is morally justified, as such a standpoint runs afoul of all sorts of difficulties, not the least of which includes violations of national sovereignty, including acculturation. In short, the alleged democratic rights that the invasion is said to install in the new “democratic” regime in Iraq are achieved at the cost of hundreds of thousands of innocent Iraqi lives, not to mention the basic Iraqi right to sovereignty, including the right to choose one’s own form of government as one sees fit! If it is true that Iraq is guilty of human rights abuses, then reform from within, not replacement from without, of its government might be in order. And punishment of those most directly and strongly responsible for those abuses must be administered according to due process. No hard paternalistic view of what is “best” for Iraqis according to Westernized standards works here. Moreover, it must not be presumed that democracy is the best or even a good form of government.¹⁸ We might recall the blistering critique of democracy by Socrates in Plato’s *Republic*. Here history is our wisest teacher, and it tells a horrific story of human rights abuses by the U.S. from its very inception to even this day, both domestically and globally. Furthermore, as I stated earlier, even if the preceding problems can be averted, the invasion and occupation of Iraq is hardly a proportional response to a non-democratic government. It is, in short, morally absurd to think that the installation of democracy justifies the killing of so many Iraqi civilians. Thus the argument from democratic nation-building amongst non-democratic nations or countries does not work here.

17 Gewirth 2001: 49. Gewirth’s phrase is “resorting to war on wrongful grounds.” Also see Burleigh T. Wilkins’ claim that “planning and waging wars” also constitute war crimes (Wilkins 2001: 85).

18 One of numerous examples here is Hiley 2006. For a discussion of this book, see Corlett 2006b.

Responsibility for the invasion and occupation of Iraq

In light of the fact that the invasion of Iraq was morally *unjustified*, who is to be held accountable for it and how ought they to be punished or otherwise sanctioned? Many would argue that the trial of such war criminals ought to take place at the ICC or an International War Crimes Tribunal.¹⁹ Congruent with the ICC's request that each country or nation take it upon itself to handle such matters appropriately so that the ICC is seen as a court of last resort in such matters as war crimes and crimes against humanity, I shall argue that citizens of the U.S. approach the U.S. war crimes in Iraq in the following manner. They must first bring formal charges against the officials most responsible for the invasion, and make them face trial in a U.S. federal court. But who in the U.S. ought to be tried and for what sorts of war crimes? And what principles might be adduced to decide how to punish such persons should they be duly found guilty of war crimes?

200 And what of Obama's belief that political reconciliation is a desideratum of handling political conflicts, presumably of all kinds? It is important to point out that there seems to be no non-viciously question-begging argument for such a claim, and I have argued elsewhere that the very notion of political reconciliation presupposes mercy, which in turn presupposes forgiveness (which is hardly a moral duty, especially in criminal justice contexts), which in turn requires genuine apology by criminals which is rarely, if ever, forthcoming from even the most sorrowful criminals because it entails the rectification of wrongdoing which few, if any, offenders are willing or able to offer.²⁰ It is unreasonable to think that reconciliation ought to play any role in contexts of war crimes, except *perhaps* in cases where the bulk of those victimized genuinely desire reconciliation with their offenders who are genuinely remorseful and offer a substantial compensatory apology.²¹ Even in such instances, however, there must have been a prior relationship between the two groups to effect a *re*-conciliation, and such reconciliation is, morally speaking, a moral prerogative (not a duty) of the victimized group. But in contexts of war crimes including hundreds of thousands of unjust killings, the expectation or requirement of reconciliation is questionable. What is needed is not reconciliation, but retributive justice. Perpetrators of such evils must get what they deserve in approximate proportion to their responsibility for their harmful wrongdoings. That is, war criminals ought to be punished in rough proportion to the harm they have wrongly inflicted on others to the extent that they caused the harm as responsible agents. The issue at hand with the U.S. military invasion of Iraq is not one of simple theft or error in judgment, it is *evil* of which we speak here: mass

19 For cautions against this position and in favor of states holding their own war crimes trials, see Wilkins 2001: 86f.

20 See Corlett 2006a: Chapter 5 for discussions of these points.

21 For an analysis of the notion of collective remorse, see Gilbert 2001.

killings of innocents and the wholesale destruction of Iraq's culture and infrastructure. To insist that reconciliation, forgiveness or mercy ought to be expected of or forced on Iraqis against their wills and without proportional punishment of those U.S. leaders most directly and strongly responsible for those evils also presupposes that hundreds of thousands of innocent Iraqi deaths are not worth even the proportional punishment of a handful of non-Iraqi U.S. lives most culpable for the Iraqi deaths! Such a view does not take responsibility seriously.

Who or what is most responsible for the atrocities wrought on Iraq? Who ought to be charged with committing war crimes in the wrongful invasion and occupation and the consequences that ensued and continue to ensue therein? Given that it is the U.S. Congress that voted to grant the president the authority to declare war, "it" certainly bears a primary responsibility for the invasion—especially those who voted in such a manner, like former Senator and current Secretary of State Hillary Clinton. Thus those members of Congress who supported president Bush's declaration of war bear a great deal of responsibility for it. If not for their support, the invasion would not have occurred. Their recent claims that they were misled do not excuse them for not requiring better reasons to invade Iraq. They are formally educated persons who ought to know good reasons from poor ones, and had they actually listened to the voices of dissent in the U.S. and throughout the world and not been blinded by the "shock and awe" of 9/11, and had they exercised sufficient epistemic and moral responsibility regarding this matter of life and death as did representative Maxine Waters and a few others, they should have seen that the arguments provided for the invasion were clearly unsound and that the authority they were granting at that time to the president would very likely lead to the invasion in question. So they must be tried for war crimes of the most horrible kind: effectively approving or supporting a conflict that will essentially be violent and result in death and destruction of many innocents.

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It is obvious that George W. Bush and some of his former cabinet members must be brought to trial for the same reasons, all on the principle that those who approved and supported the violence must be held accountable for the morally unjustified use of political authority resulting in gross injustice. For they are those who had the most power to effect change in this set of circumstances.²² Moreover, they are responsible to the extent that they acted sufficiently intentionally, knowingly, and voluntarily²³ in doing what they did to cause the harmful wrongdoings associated with the invasion. And no refusal to listen to dissenting voices serves as an excuse for their ordering or otherwise effecting an unjust military invasion.²⁴

22 This principle of power to effect change is borrowed from French 1984.

23 These are the main conditions of responsibility as discussed in Corlett 2002.

24 For a recent statement of the legal case for war crimes against the Bush administration, see Bugliosi 2008.

But are there others besides the congressional members and the president and some of his members of cabinet who ought to be charged and tried for war crimes? What of former U.S. president Bill Clinton, who it is said signed into policy the invasion of Iraq? Those like Nicholas Calio²⁵ who lobbied Congress to approve the war resolution bear primary responsibility also, as well as those in the highest-level of the Pentagon, whether or not they really wanted to go to war, ought to be charged and tried in order to discover the precise level of their involvement and accountability. My impression is that some of them would in varying degrees be found responsible for the atrocity. However, one ought not to forget about certain highest-level business leaders, such as those at Haliburton and several other U.S.-based businesses such as Blackwater USA (now renamed “Z”), who are complicit in the invasion and occupation. They too must be charged and tried for aiding and abetting or otherwise supporting substantially the committing of war crimes in their involvement in Iraq. Their punishments, if found guilty, must fit their “crimes.”²⁶

202 Of course, there is the question of further military moral responsibility for war crimes in Iraq. Given that there are currently no conscripts in the U.S. military, a presumptive case for the responsibility of U.S. troops is justified, though to some extent the responsibility is mitigated on a case by case basis due to the strict authoritative military hierarchy that delimits moral responsibility in such contexts. Yet such factors are less relevant, it seems, in cases where military troops are privately contracted by the U.S. and seem unaccountable to U.S. military rules as are regular U.S. military personnel. I have in mind here the hundreds of military troops of Blackwater USA, which (being supported by hundreds of billions of dollars of Congressionally approved funding to assist with the invasion and occupation) is said to be responsible and on trial for the killings of numerous Iraqi civilian non-combatants as well as Iraqi military who are defending their nation from the U.S. invasion and occupation. Since the invasion and occupation is morally unjust, then the question is not whether further U.S. military personnel ought to be punished, but how. And there are various levels of responsibility here just as there are at the governmental and business spheres of action concerning Iraq. As a general rule, those with the most power to effect change in a military organization are potentially more responsible for the war crimes than mere troops. But a careful assessment of the facts of each case must be performed. Careful due process of law is needed. Some key questions here include to what extent each of those in the U.S. military hierarchy could have without significant reprisals refused to comply with the order to invade and occupy. And a similar question can be asked

25 Nicholas Calio served as the assistant to president Bush from 2001–2003 and at the president’s request lobbied Congress for approval of the Iraq war resolution.

26 For discussions of proportional sentencing, see Davis 1992; von Hirsch and Ashworth 2005.

of those at lower levels of role responsibility. The answers to these kinds of questions would determine how responsible each military officer is who was or is involved in the killing of Iraqis and the devastation of Iraq.²⁷

But what about U.S. citizens' collective responsibility for war crimes? Is the U.S. citizenry morally responsible for the evils resulting from the invasion? If not, why not? And if so, who and to what extent of the citizens of the U.S. ought to be held legally accountable? (Assumed here is the congruence of the moral and legal ideas of responsibility and that those who are morally responsible for such war crimes ought to be brought to justice legally). The U.S. citizenry collectively ought to charge itself with war crimes because of its clear majority support of the invasion at least at the outset in its fervor of self-described patriotism,²⁸ and because it was supportive of the invasion and failed to adequately question the reasons for it. In short, U.S. citizens were on average and as a class both morally and epistemically blameworthy and culpable for their support of the invasion. As "punishment" for its strident and vocal support of the unjust invasion and occupation, it ought to instruct Congress to order the payment of substantial reparations to Iraq in proportion to the damages done, an issue to which I turn below.

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This is not the time for pacifistic calls for forgiveness and reconciliation where what is needed is due process and retributive justice for such war crimes. So the question before us is whether or not or to what extent the U.S. citizenry is responsible for what many refer to as their government's "terrorist" invasion of Iraq, and how it ought to be punished for what some refer to as state-sponsored military-style terrorism.²⁹ The U.S. citizenry is collectively liable for the atrocities committed against Iraq by the U.S., and this is true even though not distributively throughout the entire populace.³⁰

27 Recently in San Diego, California, lance corporal Pennington and several of his military colleagues were tried for the killing of an Iraqi civilian during wartime. Their defense is in large part that the stress of war caused them to act in ways that clouded their better judgments, and eventuated in the killing. Their defense attorneys argued that they killed the civilian because they thought that the safety of their fellow troops was at stake. They were recently tried but found not guilty of all major charges, and shall serve no time in prison for their killing of the Iraqi civilian, a fact that neither denies. One is reminded here of president Bush's promise prior to the invasion that no U.S. troops would be punished for their service in Iraq. But one question to ask here is if such troops were rightly convicted of the war crime in question and duly sentenced to life in prison, how much more ought those who placed him there to be punished if duly convicted of war crimes of a much more serious variety, quantitatively speaking?

28 Indeed, the U.S. public support for the invasion and occupation was for a few years just prior to and during the invasion so strong that several of those who even questioned its moral veracity were often angrily charged with anti-patriotism, or treason.

29 That states can engage in terrorism is argued in Corlett 2003: Chapter 5.

30 Feinberg 1970: Chapter 8.

But it might be objected that my argument is proceeding at too rapid a pace. For simply because the parties mentioned had various roles to play in what eventuated in the evils in question does not imply that the U.S. parties mentioned are responsible for all of those consequences. All they are responsible for is the invasion and occupation, but not the awful results that were “unforeseen” or “unintended.” It is at this point of the argument that one might raise the problem of the doctrine of double-effect, arguing that it permits a certain amount of civilian carnage as the side-effects of the employment of weapons of mass destruction even if the U.S. used the weapons to attack combatants in the process of the invasion. “Briefly, the law states that one is sometimes permitted knowingly to bring about or permit as a side-effect of one’s actions something which it would be absolutely impermissible to bring about or permit deliberately as an end or as a means.”³¹ Thus those most responsible for the invasion are not, it is urged, responsible in the requisite sense for the collateral damage against innocent Iraqis.

204 Now it is fair to ask how reasonable it is to think that anyone declaring a military assault can expect to not harm innocents in significant ways, especially when weapons of mass destruction are used. My “Scope of Responsibility Principle,” states that “to the extent that I am responsible for X, and to the extent that I, being a reasonable person can understand, by way of common sense reflection, that X is likely to cause or lead to Y, I am also responsible for Y.”³² This implies that under the circumstances, it is the burden of these parties to prove that mitigation or excuse obtains in their cases because it was unreasonable for them to think that their merely invading Iraq could possibly lead to the horrible results that have occurred. I do not think that this is a serious consideration, especially the higher one “climbs” the ladder of responsibility. And while some findings of due process might dissuade me along these lines, there is at least sufficient evidence to justify the charges of war crimes and to permit the due process system to determine the guilt or innocence of the charged parties. Those who start wars are responsible for even the unintended deaths and other serious harms to innocents to the extent that a war or invasion eventuates in such collateral damage that can be foreseen by common-sense reflection. Like categories of moral justification, responsibility admits of degrees.

What are the harms experienced by Iraq at the hands of the U.S.?

Prior to addressing the matter of how those guilty of war crimes in Iraq ought to be punished if they are duly found guilty by a fair-minded panel of judges, it is vital that a preliminary estimate of the basic damages be made, even though damages are currently incomplete and perhaps grossly underestimated. First, there is

31 Nagel 1979: 60.

32 Corlett 2006a: 25.

the killing of hundreds of thousands of innocent Iraqis by U.S. troops. While it may be argued that some such Iraqis were killed by coalition troops and that some of the Iraqi lives were taken as the result of strife between Muslims in the region and that the U.S. bears no responsibility for those deaths, it must be kept in mind that the U.S. spearheaded this invasion, and thus bears at least a shared responsibility for even those Iraqis killed by non-U.S. military personnel, though it is not obvious what responsibility the U.S. has for the deaths that result from the inter-Muslim strife. Further, while some might argue that those Iraqis who engaged U.S. troops in military combat ought not to be counted among the innocent, it must be borne in mind that the U.S. chose to, against the advice of much of the world, invade Iraq. And given that the invasion is morally unjust, Iraqis clearly had a moral right to self-defense against U.S. imperialist aggression. As John Rawls argues, unjust wars imply rights to self-defense of combatants and non-combatants alike by those in the unjustly attacked country, as well as those who sympathize with them and come to their defense.³³ Assumed here is the truth of the claim that if anything is a moral right, self-defense against violent imperialism is. So the killings of hundreds of thousands of Iraqis is the primary responsibility of the U.S., and cannot plausibly be denied or distributed to others. Moreover, the very idea of reconciliation, forgiveness or mercy toward the U.S. in this case is a sign of a lack of moral courage to do what justice requires.³⁴

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Second, there is the physical and mental wounding of millions of surviving Iraqis, part and parcel of the non-lethal collateral damage of this unjust military invasion. Third, there is the destruction of a sovereign nation, including its culture and infrastructure. Then there is the theft of Iraqi oil (one of the largest oil reserves in the world), which might well constitute a primary motivation for the

33 See note 13.

34 For those who require a sound reason for punishing those who kill others unjustly, there is the Feinbergian one that to kill another is to set back their legitimate vital welfare and ulterior interests in achieving certain morally legitimate goals that constitute our meaning in life. To kill another unjustly is to rob her of her most central interests in pursuing her own projects that in turn largely, if not wholly, define who she is. It is, in short, to extinguish another's self that is necessary for the fulfillment of her projects that bring meaning to her life. And while death is surely not always or necessarily a harm to the one who dies, it is clearly such a harm in most cases for the reasons just cited. As Thomas Nagel puts it: "If death is an evil at all, it cannot be because of its positive features, but only because of what it deprives us of" (Nagel 1979: 1) After all, "If death is an evil, it is the *loss of life*" (Nagel 1979: 3). Moreover, "life is all we have and the loss of it is the greatest loss we can sustain" (Nagel 1979: 1). Insofar as punishment and compensatory justice are concerned, it is important to bear in mind that "any death is the loss of *some* life that its victim would have led had he not died at that or any earlier point. We know perfectly well what it would be for him to have had it instead of losing it, and there is no difficulty in identifying the loser" (Nagel 1979: 7–8). This is especially true concerning acts of unjust killings such as in Iraq. Thus the unjust killings of hundreds of thousands of Iraqis by the U.S. military demands justice, not forgiveness, mercy, or reconciliation!

invasion and occupation. These are just some of the major damages that Iraqis suffered as a result of the invasion and ongoing occupation of their nation by the U.S.. No doubt there are others.

206 I describe these effects of the unjust war as “evil,” and I do so with some conscious understanding of the meaning of the term. Feinberg analyzes the concept of evil as a complex array of different kinds of moral badness. Along the way, he cautions: “It is one thing to identify evils and quite another to understand or explain what we are saying when we pronounce a thing ‘evil.’ Few of us have any hesitation in judging things evil, but most of us find it surpassingly difficult to explain what we are doing when we make and support such judgments.”³⁵ “Pure’ evil requires exclusion,” he claims. “It is evil undiluted, two hundred proof, served in an old fashioned shot glass and taken neat, without a chaser. It is all evil and nothing but evil, and its impact is unweakened as it ages.”³⁶ I do not know if anything is “pure evil and nothing but evil,” as Feinberg states of the nature of pure evil. My claim is that the U.S. is, on balance, evil in its actions towards Iraq. The U.S. has committed a series of extremely harmful wrongdoings concerning that nation. And like most any unjust war, it has resulted in evil in the further sense of constituting extremely harmful wrongdoings, both qualitatively and quantitatively. This is important because the proper sentencing of offenders must, among other things, account for the degree or extent of their harmful wrongdoings. To intentionally engage in activities that common sense would lead one to think will likely eventuate in the deaths of others is not evil, unless, of course, it turns out to be morally unjustified extremely harmful wrongdoing. And when this happens, a U.S. federal court must take into account the willful disregard of the lives of hundreds of thousands of Iraqis by the U.S. in sentencing those from the U.S. found guilty of such war crimes.

Punishing the guilty parties

But how are these and other damages to be addressed in a U.S. federal court? What normative principles might be brought to bear to inform judges in order to exact justice in the fair and just sentencing of these war criminals? In *Responsibility and Punishment*,³⁷ I have argued in favor of a retributivist or desert theory of punishment, the general plausibility of which I assume here. But I believe that much of what I argued therein can be applied to the case of war crimes in Iraq, both in terms of individual and collective responsibility and proportional

35 Feinberg 2003: 144. For a discussion of Feinberg’s analysis, see Corlett 2004. For a social psychological study of evil, see Zimbardo 2007.

36 Feinberg 2003: 142.

37 Corlett 2006a: Chapter 4. For other retributivist analyses, see von Hirsch 1993, 1976, 1987; von Hirsch and Ashworth 1992; Kleinig 1973.

punishment of war criminals and compensation for war crime atrocities. While it is hard to imagine significant mitigating or excusing circumstances for those having the most power to effect change who are guilty and responsible in this case, such mitigation seems to infect cases further down the ladder of responsibility in terms of governmental, military, and corporate responsibility. This must be kept in mind when making assessments of responsibility and punishment for such war crimes. Nonetheless, von Hirsch is correct in insisting that the general principle of “commensurate deserts” or proportional punishment is a “requirement of justice,”³⁸ though it is not an absolute one and it admits of complexities of ordinal and cardinal desert,³⁹ as well as a “living standard analysis” wherein the seriousness of crimes is judged by way of harm and culpability dimensions.⁴⁰ Moreover, as Kleinig argues in response to the anchoring and adjustment problems of proportional punishment:

In relating punishments to offences, we simply reserve the mildest punishment we can reasonably give for the least serious wrong, the most severe punishment for the most wicked deed, and scale other wrongs and punishments in between, in accord with the pattern of scaling...We might wish to say that such a view incorporates both proportionality and equivalence; proportionality in that the more serious a wrong the more severe the punishment, equivalence in that the wrong and the punishment occupy the same relative position on their respective scales.⁴¹

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In principle, I concur with Kleinig that considerations of proportional or commensurate scaling can be done in a reasonably just or approximate fashion in order to provide a substantial answer to the anchoring and adjustment problems. And I have provided a set of principles of proportional punishment that might serve as some rules of thumb in sentencing criminals such that they get what they deserve.⁴² Moreover, I believe that they can be applied effectively to the sentencing of U.S. war criminals in the case of Iraq. While problems of proportional sentencing arise for any positive theory of punishment that seeks an exacting kind of commensurate sentencing of criminals, my retributivism depends on a less exacting notion of proportional punishment that seeks to punish offenders in *underdetermined* ways, thus avoiding problems of possible over-punishment. As for the problem of “double-punishment” noted by Ryberg and others, it is misleading to refer to the side-effects of punishment as punishment itself. And since virtually

38 von Hirsch and Ashworth 1992: 197.

39 von Hirsch and Ashworth 1992: 209.

40 von Hirsch and Ashworth 1992: 220–232. See Ryberg 2004 for a criticism of proportionalism, and of von Hirsch’s proportionalism in particular.

41 Kleinig 1973: 124.

42 Corlett 2006, Chapter 4.

anything one does in social life has side-effects on others, I consider this to be no meaningful concern for systems of punishment that are conscientious in their sentencing of criminals who acted with significant voluntariness and act the way they did to bring onto themselves the likely side-effects of punishment. Assumed here is a judicial system's understanding of the conditions of prison life, and that prisons are administered in ways that do not undermine rights to humane treatment such that whatever "double punishment" that accrues within them is minimized both qualitatively and quantitatively.

208 I have argued that the general principle of proportionality admits of sub-principles that might guide the sentencing of criminals. For example, the "Matching Principle of Proportional Punishment" requires that, "as far as humanly possible, criminals ought to be punished in ways that match the extent of the amounts of harms that they illicitly wrought on others."⁴³ Punishment is hardly a science. But moral intuition and reasonableness must guide our application of plausible principles in determining how those guilty of the war crimes in question ought to be punished. Unless excusing or mitigating circumstances can be proven beyond reasonable doubt, it is reasonable to think that those with the greatest power to decide to invade Iraq deserve the harshest of sentences, while many soldiers and the remaining citizenry in the U.S. deserve far milder penalties, at least because of the government's success in duping most of them about the evidence for war and due to their generally being inadequately educated with a critical consciousness to recognize such trickery and fallacies when they arise. Here the words of Rawls are helpful:

As for soldiers of the outlaw state, leaving aside the upper ranks of an officer class, they, like civilians, are not responsible for their state's war. For soldiers are often conscripted and in other ways forced into war; they are coercively indoctrinated in martial virtues; and their patriotism is often cruelly exploited.⁴⁴

One standard of assessment here is whether or not it is reasonable to nonetheless hold the U.S. adult citizenry accountable for being seduced by such poor evidence and a perverted sense of patriotism.⁴⁵ But for those of us who recognize that the U.S. economic system essentially prohibits the vast majority of U.S. citizens from receiving a higher education, and since critical thinking is not taught throughout the pre-college public school systems, it seems to be an overly demanding moral standard to hold the bulk of U.S. citizens strongly accountable for not seeing

43 Corlett 2006, 86.

44 Rawls 1999: 95.

45 For philosophical investigations of the concept of patriotism, see Primoratz 2002. Also see *The Journal of Ethics* 13:4 (2009) for a special issue devoted to the discussion of patriotism.

through the mischievous “evidences” for the U.S. invasion and occupation. Even so, this epistemic factor only mitigates their responsibility. It does not excuse it. The U.S. citizenry, even in its willful or non-willful ignorance, has on balance supported the invasion and occupation until recently. And for most of those who now have doubts about it, their reservations seem always to be expressed egoistically in terms of how much “our” U.S. “troops” suffer from the tragedy. It seems never to be a concern about Iraqis who are killed and maimed by U.S. troops. Insofar as most U.S. citizens intentionally, knowingly, and voluntarily supported the invasion and occupation of Iraq, they are collectively responsible⁴⁶ for it in a secondary sense, and must bear the burden of compensatory justice concerning their involvement.

Absent excusing or significant mitigating factors revealed during due process, those most responsible for the invasion and occupation of Iraq must be executed just as in the cases of many Nazi war criminals (and Hussain for his human rights violations), including Bush, Cheney, Rice, Rumsfeld, and others who are approximately as responsible as these leaders for the killings that were part of the unjust invasion and occupation, while others not too far down the chain of responsibility deserve lesser but substantial punishments.⁴⁷ Perhaps an appropriate punishment for members of the latter group of harmful wrongdoers would be to force such convicts into public slave labor in and for Iraq for the remainder of their lives in order to in some measure pay back to Iraq what they owe in partial remainder.

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Besides satisfying significantly Ryberg’s challenge of selectivity in cases where resources do not permit the trying of each and every U.S. war criminal by suggesting combined legislative and court-ordered punishments and penalties of various levels and kinds of responsibility for such crimes, one moral principle at work here is that no one ought to be permitted to benefit from their own wrongdoing,⁴⁸ while another is that proportional punishment requires that both over-punishment and under-punishment be avoided as much as practically possible.⁴⁹ My suggested sentencing admittedly violates the under-punishment requirement, though it seeks as best it can within the bounds of humaneness to approximate justice in terms of the higher end of proportional punishment for war crimes resulting in great numbers of Iraqi deaths.

46 For an analysis of collective responsibility, see Corlett 2002.

47 Assumed here is the idea that capital punishment stands among the harshest of state responses to severe war crimes, though one ought to remain mindful of Søren Kierkegaard’s remark that the torment of despair is not being able to die (Kierkegaard 1941: 150).

48 I borrow this principle from von Hirsch and Ashworth 1992: 399.

49 This point is found in von Hirsch and Ashworth 1992: 198.

Compensating Iraq

Moreover, another principle of proportional punishment is that those who wrongfully harm others must provide adequate compensation to their victims commensurate with the harms caused. While this principle is hardly applicable in every case due to the fact that many offenders are simply unable to provide such compensation, this fact does not vitiate the justice of applying the principle when offenders *are* able to provide some measure of compensation to their victims. As von Hirsch argues, “the aim of criminal justice should be to ensure that the offender compensates the victim and the wider community for the loss inflicted by the crime.”⁵⁰ Thus, of those highest-level White House, Congressional, Pentagon, and business officials most strongly responsible for the war crimes of unjust killings, *all* of their individual financial assets must be seized to provide an initial pool of billions in capital from which Iraqis can be partially compensated for the unjust killings. Those who attempt or assist in the attempt to wrongfully hide or transfer such assets either immediately prior to or after the charges made against the offenders would be tried for obstruction of justice and, if convicted, would face mandatory and severe punishment because it is a capital case they are obstructing. While this pool of billions of dollars of compensatory funds hardly suffices as just compensation for the harmful wrongdoings in question, the imposition of a “flat” reparations tax on all U.S. citizens and businesses most directly responsible for the evils serves the purpose of supplementing the pool of compensatory funding to more properly match the harmful wrongdoings suffered by the Iraqis as the result of the U.S. actions. The amount of such a tax should reflect the proper value of each Iraqi wrongfully killed, along with the cost of physical and mental healthcare for those millions of other Iraqis injured, and the cost of rebuilding the infrastructures of their towns and cities that were destroyed due to the invasion and occupation. From the mercenary activities of the likes of Blackwater USA, Dyncorp and Triple Canopy to munitions parts providers to food services, each such business, whether U.S.-based or not, must be ordered to pay its fair share of reparations to Iraq. The greater the damage done to Iraq as a contributory cause, the more liability each such business has and should pay to Iraq. The range for *each* case of business compensatory damages might be set at 1 million dollars to 100 billion dollars, contingent of course on the facts of each case of harmful wrongdoing.⁵¹ Only careful and fair due process can hope to establish these amounts more precisely.

50 von Hirsch and Ashworth 1992: 401.

51 It has been argued that the United States and the European Union could organize and finance a generous program of reconstruction aid to compensate the Palestinians, which would terminate all claims for their actual return into what is now and will forever remain Israeli territory” (Mearscheimer and Walt 2007: 342–343). But this approach has a severe problem. Although it apparently seeks to correct the harmful wrongdoing that post-World War II allied countries affected in establishing the state of Israel in 1948, it ignores Israel’s

While there is a real sense in which even these reparations taxes, along with the complete asset seizures and public executions of Bush, Cheney, Rumsfeld, Rice and some others fails to do sufficient justice in matching the harms suffered by Iraq at the hands of the U.S., it does represent an unprecedented ruling of justice relative to the U.S., and a continual reminder to U.S. citizens, government, military and business officials that justice demands the respecting of innocent peoples' lives and cultures, and that the selection of political and business leadership is far more important than the typical U.S. citizen is led to believe. To the extent that such sentencing by the federal court is enforced by a credible threat of coalition boycotts and embargos, etc., the U.S. will hopefully understand that it must change its "ways of empire" in order to even survive into the future. For it would mean that imperialism is morally wrong and simply has too high a cost. And I should note that this feature of my view supports the Kantian justification of both the institution of punishment and its particular forms insofar as it allows for the secondary utilitarian considerations to play a deterrent role regarding prospective war criminals.⁵²

There is my "Punishment-in-Kind Principle of Proportionality:" "...proportionality permits at least the attempt of the state to impose on qualifying criminals those punishments that most closely resemble the kinds of harms the criminals have inflicted unjustifiably on others."⁵³ This is not a necessary condition of proportional punishment, but one that ought to be attempted in good faith whenever possible in light of the facts of the case.⁵⁴ Although the matter of reparations does not sat-

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role in committing some of the world's worst human rights atrocities against Palestinians. So then why is Israel not deemed a worthy perpetrator and required to pay substantial reparations to Palestine, for say, at least the duration of its immoral occupation of Palestinian lands and killings of thousands innocent Palestinians? While my approach in this chapter seeks only to address U.S. responsibility for war crimes against Iraq, it hardly excuses Israel of its substantial debt of compensation to Palestinians and the military-backed command that Israel relinquish those territories immediately into Palestinian hands. Nor does my approach, were it to focus its attention on the punishment of war crimes against Palestinians, ignore the moral need to punish with impunity those Israeli leaders most directly responsible for the human rights violations leading to the killings and maimings of so many Palestinian citizens. Insofar as it is plausible to think that the Israel lobby (including Israel's government itself) had much to do in shaping the U.S. decision to invade and occupy Iraq, then those most directly responsible for such influence bear responsibility for the severe harmful wrongdoing and merit severe punishment for their actions, failed actions, or attempted actions, as the case may be. While Mearmescheimer and Walt do not fail to include the Israel lobby as a primary influence on the U.S. decision to invade Iraq, they seem to give Israel and the Israel lobby a "pass" when it comes to punishment and compensation for the evils of the ongoing atrocity given their respective roles in it.

52 See, for instance, Corlett 2006a: 45-46, 54.

53 Corlett 2006a: 89.

54 As Rawls writes of one of the conditions of morally justified civil disobedience, it is a "practical condition." (Corlett 2003: 34-35).

isfy the Punishment-in-Kind Principle of Proportionality, capital punishment of the most egregious offenders does, though in a grossly underdetermined manner. For it to some minimal extent begins to match the wrongful killings of so many innocent Iraqis because of the directives of the Bush administration. My point is that it is a just (e.g., a roughly proportional) punishment nonetheless, and that a carefully composed coalition of states might well be able to impose the punishment should the U.S. system of justice fail to impose it, consonant with Rawls' claim that the non-compliance of outlaw states can be met with coalition states' resistance in order to bring such outlaw states into compliance with norms of international justice.⁵⁵ But that coalition must possess the wherewithal to combat the U.S. militarily, if necessary, and in compliance with the basic tenets of just war theories.

212 Each of these punishments, if imposed by a U.S. federal court, would bring a significant measure of justice to the circumstance in question. In this way, they satisfy the "Harm-Based Principle of Proportional Punishment:" "An offender's suffering from a form of punishment or compensation must both adequately compensate the victim [or the victim's surviving significant other(s)] as much as possible, and negate the economic, social, etc., advantage(s) the offender gains by committing the offense..."⁵⁶ The infliction of capital punishment on those most directly and strongly responsible for the killings of Iraqis addresses those deaths, however inadequately. And the seizure of their assets along with reparations by the U.S. government and U.S.-based businesses most responsible for the invasion and occupation addresses the matter of roughly adequate compensation to Iraqis for both the numerous killings of Iraqis by the U.S. military as well as the other damages mentioned. Again, while this set of sentences is inadequate to fully address the harms to Iraqis by the U.S. government and some of its businesses, it is perhaps unprecedented in world history, it cannot reasonably be faulted for being insignificant in amount or insensitive to Iraq's harms. Nor can it be faulted for being unenforceable. In the end, even if a carefully constructed coalition of countries and nations does not occur due to overwhelming fear of U.S. retaliation, terrorism, as a form of self-defense and/or retribution is sometimes a morally justified option in taming outlaw societies, as I have argued at length elsewhere.⁵⁷ However, this mode of justice must be enacted subsequent to various attempts in good faith to work for justice by way of non-violent and legal channels as I have argued here.

Furthermore, the suggested punishments reflect well Joel Feinberg's expressive functions of punishment:⁵⁸ authoritative disavowal, symbolic non-acquiescence,

55 Rawls 1999: 80–81, 93.

56 Corlett 2006a: 96.

57 The conditions of morally justified terrorism are found and defended in Corlett 2003: Chapter 5.

58 Feinberg 1970: 101–105.

vindication of law, and absolution of others. In punishing harshly those most responsible for the war crimes against Iraq, the U.S. citizens publicly condemn what they did, affirming innocent Iraqi rights to peace and tranquility. In punishing these U.S. war criminals, the U.S. citizens disavow what these leaders did that was evil. In so doing, they “speak in the name of the people” in an act of symbolic non-acquiescence which publicly denounces the invasion and occupation as fundamentally unjust. This acknowledges the U.S.’s collective responsibility for these atrocities as the citizens pay reparations to Iraq for the damages caused by U.S. actions. In punishing the political, military and business leaders most responsible, the U.S. vindicates the best of law, assigning punitive damages where appropriate, and absolves to some extent those least responsible for the war crimes in question, sending a strong message that the U.S. is then no longer a country that either perpetrates or tolerates such evils, and that future severe harmful wrongdoings will also be punished with appropriateness and due harshness.

To be sure, these are not the only principles of punishment that can be brought to bear on this matter. But I argue that they are some of them that must be taken into account as much as possible. When intentional actions have resulted in the loss of many innocent lives, due process and, if justified, punishment of those most responsible must be harsh and imposed without apology. Let us not forget that it is the *offender* who owes the apology for what she has done to her innocent victims, and genuine apology requires among other things adequate compensation to the victims by the offending parties.

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Nagel writes that “We have always known that the world is a bad place. It appears that it may be an evil place as well.”⁵⁹ What we have in the case of the U.S. invasion and occupation of Iraq is a case where an evil bully has chosen to kill persons for her own selfish reasons, and kill by the hundreds of thousands in the name of “freedom and democracy.” As I see it, this is a paradigmatic instance of evil. And forgiveness and mercy have no place where evil runs rampant.

One irony here is that, with so many U.S. citizens complaining about how much the “War with Iraq” is costing the U.S. (some estimates range to over \$1,000,000,000.00 by the time of its supposed “end”), it might cost much more than that in terms of reparations the U.S. owes to Iraq for unjustly invading and occupying it. Yet few in the U.S. even contemplate this scenario. Given the facts of the unjustified status of the invasion and occupation of Iraq by the U.S., and given that most of the harmful wrongdoing is caused by the U.S., what does the U.S. owe Iraq?

Let us assume, conservatively, that 250,000 Iraqi civilians have been killed by U.S. troops. Again, we must estimate the value of a human life taken so violently. Conservatively, I estimate that each Iraqi life taken was worth at least \$10,000,000.00 in

59 Nagel 1979: 74.

part because these days in the State of California a person molested by a Catholic priest is awarded, on average, 1.2 million dollars and many wrongful death cases in the U.S. draw more than \$20 million each. Are we to assume that Iraqi lives are worth any less than what a typical U.S. life would be worth in comparison to the value of a priestly molestation? On the assumption that the answer to this question is negative, we can then calculate that what the U.S. owes Iraq for the Iraqi lives taken is at least \$2,500,000,000.000.00.

214 But there is also the matter of the destruction of virtually the entire Iraqi infrastructure mostly by the U.S., and the destruction of the Iraqi civilization and culture. There is also the matter of the U.S. needing to clean up all of its war toys and take them home where they “belong.” For they surely do not belong in Iraq! The cleanup efforts alone would cost the U.S. billions and years to accomplish. Although it is difficult to put a price on such matters, perhaps the U.S. can be “taught a hard lesson” by the awarding of Iraq a 1% in perpetuity “Iraq Reparations Tax” that would be taken from the gross annual incomes of all adult U.S. income earners. This can be calculated in conservative terms by multiplying the estimated number of adult U.S. incomes⁶⁰ (currently, 100,000,000) by the average U.S. gross annual income (currently, at least \$30,000) = \$3,000,000,000,000.00 / 1% = \$30,000,000,000.00. (30 billion USDs) each year in perpetuity. The fact that this would be perceived by most U.S. citizens as a rather high in perpetuity figure helps to offset the horror of the invasion and occupation, and the littering of most of the landscape of Iraq with U.S.’s own weapons of war. It is also meant to convey the high price that must be paid by oppressors to the victims of oppression whose religion has been forced to endure all manner of abuse as the result of the propaganda spread by the U.S. about Islam, as well as the civilization and utter confusion and lawlessness that ensued as the U.S. began its occupation. It is also meant to reimburse Iraq for the oil usurped by Haliburton in order to fuel the invasion and occupation, among other things. And those politicians, military and business leaders who are most responsible for the invasion and occupation of Iraq should have their personal assets seized in order to form an initial pool of compensatory reparations to Iraq in addition to the payment of reparations by U.S. citizens.

So the U.S. should by congressional order pay Iraq an amount of 1% of the total gross annual incomes of U.S. citizens, to be verified each year by an audit by an agency of Iraq’s choosing, and paid for in full by the U.S. as part of its reparations to Iraq. Should this be refused or impossible, attempts at reparative justice for Iraq must be made through the U.S. federal court system, and, if necessary, by way of the ICC.

But this is not the end of the story of what the U.S. is morally required to do vis-à-vis Iraq. The aforementioned reparations are based on the assumption that the

60 Estimated data taken from the 2000 U.S. Census.

U.S. is required to completely vacate Iraq within 2 years, a promise made by U.S. president Barack Obama as he campaigned for office. As a genocidal invader, the U.S. has no moral right to be in Iraq, and it must use the 2 years to attempt in good faith to restore (at U.S. expense) Iraq to its former conditions prior to the invasion. Infrastructure must be rebuilt at U.S. expense, and within 2 years before the U.S. vacates Iraq completely, never to return until and unless explicitly invited by Iraq or unless the basic just war conditions are satisfied,⁶¹ or until the conditions of humanitarian intervention⁶² or the duties of assistance are satisfied.⁶³

Conclusion

The U.S. invasion and occupation of Iraq is a moral travesty of grand proportions. Those most responsible for it owe far more than they ever pay. But pay they must. Proportional justice suggests that they who are duly found guilty of war crimes against Iraq of the kind discussed herein must have all of their assets seized in order to pay part of what is owed to Iraq in damages caused by the war criminals. But the war criminals must also be executed for their war crimes. Finally, the U.S. has a moral duty to pay reparations to Iraq at an estimated 1% of each adult wage earner's annual salary in perpetuity. This is primarily a desert-based judgment grounded in the notion of U.S.-rights violations of hundreds of thousands of Iraqi civilians killed by U.S. military and paramilitary troops. This is not the time for morally cowardly calls for peace and reconciliation between the U.S. and Iraq. It is time for retributive justice. And should the U.S. fail or refuse to heed the call for such justice, it will continue to experience what the bin Ladens of this world have to offer in terms of a deadly response to U.S. militarism and hegemony.

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61 For a discussion of these conditions, see Walzer 2000. Also see note 1.

62 See Walzer 2000.

63 For a discussion of these conditions, see Rawls 1999.

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J. Anđelo Korlet

Odšteta za ratne zločine SAD protiv Iraka

Apstrakt

Imajući u vidu osnovna načela pravednog rata, kao i načela kompenzacijske pravde pravnog poretka Sjedinjenih Američkih Država, autor zastupa stanovište da je američka invazija na Irak, od 2003. godine do danas, moralno nepravedna i da SAD duguju znatnu odštetu Iraku.

Ključne reči kompenzacijska pravda, Irak, teorija pravednog rata, odšteta, Sjedinjene Američke Države, ratni zločin.