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Imposing the 'Rule of Law': The Lessons of BiH for Peacebuilding in Iraq

DAVID CHANDLER

With the task of establishing a new set of regime structures in Iraq, many policy-makers have turned to the Bosnia and Herzegovina (BiH) experience for lessons in peacebuilding. The key lesson advocated by international officials has been the prioritization of the 'rule of law' rather than the focus on political processes and elections. It is held that while regular elections have merely reinforced the dominance of political elites hostile to reform, internationally-imposed legal changes have galvanized the peacebuilding process. This article challenges that perspective through focusing on three areas of legal activism in BiH: constitutional change, property return and employment laws. It suggests that the 'rule of law' approach sees legal or administrative solutions as a short cut to addressing political problems, fetishizing the legal framework at the same time as marginalizing the political sphere. Rather than more coercive external involvement in the form of pressures for more legislation and better law enforcement, the experience of BiH highlights the need for greater levels of political legitimacy, a need which runs counter to the logic of the 'rule of law' approach.

The Lessons of Bosnia and Herzegovina

As questions are raised about the US-led coalition's preparations for post-war transition to self-government in Iraq, the need to learn the lessons from the Bosnian experience of post-conflict peacebuilding has been frequently raised. In the US and British press, the voice of the current international High Representative for BiH, Lord Paddy Ashdown has been one of the loudest, questioning why we are 'seemingly endlessly condemned to re-inventing the wheel when it comes to peacekeeping?'¹

The key lesson for Iraq, according to Ashdown, is that of 'the overriding priority...of establishing the rule of law'.² Ashdown attributes the slow progress made in BiH to the fact that, initially, the international

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administration focused on working with political representatives rather than in imposing a comprehensive legal framework: 'This, above all was the mistake we made in BiH. ... It is much more important to establish the rule of law quickly than to establish democracy quickly. Because without the former, the latter is soon undermined. In BiH, we got these priorities the wrong way round.'³ According to Ashdown, the international administrators were slow to learn that when it comes to peacebuilding, 'the process is sequential'; a 'bitter price' was paid in failing to understand 'the paramount importance of establishing the rule of law as the foundation of democratic development'. That price is allegedly being paid today in facing what Ashdown believes to be entrenched political opposition to peacebuilding reforms:

Now we are starting to win this battle for the rule of law in BiH. But it is tough, because we are fighting an entrenched enemy that reaches into every corner of politics, government and the state. And it is much tougher than it would have been if we had made the rule of law our number one task in the first year rather than in the sixth.⁴

BiH is not the only example where political extremism, criminal profiteering, corruption and regional patronage networks are seen to have undermined international peacebuilding initiatives.⁵ In his pre-departure press conference in December 2000, Bernard Kouchner, the senior UN official in Kosovo, said the 'lesson of Kosovo' was that 'peacekeeping missions need to arrive with a law-and-order kit made up of trained police, judges, and prosecutors and a set of draconian security laws'.⁶ Following the experiences of international regulatory regimes in BiH and Kosovo, the continuing instability and the 'light footprint' of the international community security forces in Afghanistan have added to fears that current peacebuilding strategies have been inadequate.⁷ There is widespread concern that the breakdown of law and order in Iraq following the collapse of the Saddam regime will result in a 'criminalization' of the Iraqi state or in a new outbreak of ethnic and religious strife which could leave large areas of the country in chaos.⁸

The argument for the sequencing of the rule of law before rolling-back the authority of the international transitional administration is at the heart of calls for peacekeeping reforms. The influential 2000 Brahimi panel report on UN peace operations suggested that: 'These missions' tasks would have been much easier if a common United Nations justice package had allowed them to apply an interim legal code to which mission personnel could have been pre-trained while the final answer to the "applicable law" question was being worked out.'⁹ Since then,

other reports have concurred about the need for a rapid introduction of a judicial package supported by effective military forces that can quickly subdue armed opposition, perform basic constabulary tasks, and ensure that civilian law enforcement officers and administrative officials can perform their functions in an atmosphere of relative security.¹⁰

There would now appear to be a consensus among international policy-makers that peacebuilding should be 'sequenced' with 'the rule of law' establishing the basis for reconstruction and democratic elections. This 'more muscular' approach to peacebuilding, held to be necessary to deal with criminalized or fragile states, where social democratic forces have been marginalized through authoritarian rule, conflict and the privatization or fragmentation of social networks, has been applied to BiH under Ashdown's administration.¹¹ This perspective would suggest that the US-British transitional authority in Iraq should concentrate on imposing their control over the territory and ensuring the success of 'an exercise in state building from outside on a scale that has never been attempted before' rather than handing over power 'prematurely' to Iraqi representatives.¹² Transition to Iraqi rule prior to establishing the framework of the 'rule of law' would, in this scenario, leave the path open for power to be consolidated by elites with no interest in peacebuilding, for example, those with links to the previous Ba'athist regime or to fundamentalist religious groupings with support from neighbouring states.

This article suggests that the approach of prioritizing the 'rule of law' could have the unintended consequence of creating further instability and fragmentation in Iraq through delaying a political framework capable of giving Iraqi people a say in the running of their country. 'Rule of law' regulation through the prioritization of law above the political sphere cannot compensate for, or overcome, the political problems involved in peacebuilding and post-war reconstruction. In BiH, international policy, which has sought to marginalize the sphere of politics, has institutionalized the current ethnic and regional divides rather than seeking to overcome them. Progress in the 'rule of law' has been promoted by the Office of the High Representative (OHR) as demonstrating the major improvements made under international administration, despite the continued political division of the small state. Here it is suggested that the gap between the internationally-imposed laws and the politically expressed will of BiH society, at the heart of the justification for externally-imposed legislation, creates a 'rule of law' paradox. This paradox is drawn out below, in examples which illustrate that the attempt to privilege law above politics in fact weakens and discredits the 'rule of law' rather than strengthens it. First, while the new laws may appear to be very impressive achievements on paper, they do not necessarily reflect

or encourage an improvement in practice. Second, and more importantly, the development of the 'rule of law' through the external imposition of legislation undermines the process of consensus-building necessary to give post-conflict populations a stake in the peacebuilding process.

The following sections consider briefly three areas of legislation publicly justified as necessary to undermine the power of political forces held to oppose post-war reconstruction. In each of these cases the 'rule of law' was developed and imposed over the opposition of Bosnian political representatives. The areas have been selected on the basis of their prominence in international reports on progress in the region. They are: first, the imposition of new constitutional changes which have sought to marginalize the governing influence of the main nationalist political parties; second, the imposition of housing legislation allowing refugees and displaced people to return to their pre-war homes; and third the imposition of public sector job allocations, particularly in the police force, in proportion to the 1991 census figures.

'The Rule of Law' and Political Representation

In September 2000, the constitutional court of BiH ruled that the general principle of political equality of the three constituent peoples should hold throughout BiH and both the political entities, the Bosniak–Croat Federation and the Serb-dominated Republika Srpska (RS). This decision, which affected the entity constitutions, was pushed through by the three non-Bosnian, internationally appointed judges but with the support of only the two Bosniak judges. The two Serb and two Croat judges opposed the ruling.

Already clearly politically divisive, this general ruling on principle was then used by the international administration to radically reshape the political framework. In January 2001 the High Representative issued a decree creating two constitutional commissions, which met to discuss specific textual proposals for constitutional change, already drawn up by an international taskforce.¹³ The Mrakovica–Sarajevo 'Agreement on the Implementation of the Constituent Peoples' Decision of the Constitutional Court of Bosnia and Herzegovina' was finally imposed by the OHR in March 2002.¹⁴ Although it was signed by representatives of the United States and the European Union, the Agreement was not supported by BiH representatives despite its perceived constitutional importance as 'an addendum to the Dayton Agreement'.¹⁵ The new constitution was imposed by three decrees requiring constitutional changes in the two entities and reforming the election laws. According to the then High Representative, Wolfgang Petritsch, imposition was necessary: 'I'm not

going to allow. . . nationalist parties. . . to prevent them from taking effect. As a guarantor of the Mrakovica–Sarajevo Agreement, I simply cannot accept the continuing obstruction on the side of these nationalistic dinosaurs. I cannot allow the prospect that these. . . parties could hold the citizens of this country hostage.¹⁶

The implications for the governments of both the entities were extensive. Section II, covering the distribution of key political posts states:

PM and Deputy Prime Ministers may not come from the same constituent people. Out of the following positions not more than 2 may be filled by representatives of any one constituent people or of the group of Others: 1) Prime Minister 2) Speaker of the House of Representatives/Republika Srpska National Assembly 3) Speaker of the House of Peoples/Council of Peoples 4) President of Supreme Court 5) President of Constitutional Court 6) Public Prosecutors. Presidents of Entities – the President shall have two Vice-Presidents coming from different constituent peoples.¹⁷

Of the six most important positions in RS only two, or one-third, could be held by Bosnian Serbs. This was held to be a major step forward for democratizing the Serb entity because the governing representatives would be dominated by non-Serbs although the majority of the population were Serb. Section III of the Agreement covered in greater detail the ‘minimum representation in the government of the Federation of BiH and Herzegovina and of the Republika Srpska’, stating:

The RS Government (Prime Minister and 16 ministers) shall be composed of 8 Serb, 5 BiHk and 3 Croat ministers. One Other may be nominated by the Prime Minister from the quota of the largest constituent people. There shall be additionally a Prime Minister who shall have two Deputy Prime Ministers from different constituent peoples selected from among the Ministers; and the Federation Government (Prime Minister and 16 ministers) shall be composed of 8 BiHk, 5 Croat and 3 Serb ministers. One Other may be nominated by the Prime Minister from the quota of the largest constituent people. There shall be additionally a Prime Minister who shall have two Deputy Prime Ministers from different constituent peoples selected from among the Ministers.¹⁸

The new framework radically transformed the governments of BiH, particularly in RS. For Petritsch, the use of the law to implement drastic reforms to the peace settlement was immensely pleasing. He stressed ‘that never ever in the three years of my mandate in BiH and Herzegovina have I experienced a feeling of such profound relief and

satisfaction'.¹⁹ On paper the three main nationalist parties lost their power and control; governments at both the entity and state level are based on multi-ethnicity rather than votes. The October 2002 elections demonstrated the apparent necessity of adopting this strategy of using the law to reshape BiH politics. Representatives of the three main nationalist parties, the SDA (*Stranka Demokratska Akcija* – Party of Democratic Action), SDS (*Srpska Demokratska Stranka* – Serbian Democratic Party), and the HDZ (*Hrvatska Demokratska Zajednica* – Croatian Democratic Community), won the Bosniak, Serb, and Croat seats in the three-member BiH Presidency. At the State level, and in the elections for the Entity parliaments, the HDZ, SDS and SDA were the leading parties in their respective ethnic constituencies, yet are restricted to minority positions in ruling authorities.

The manipulation of election and constitutional laws produced a situation where the results of the elections have no relationship to the expressed will of Bosnia's citizens at the ballot box. It is not just at the level of entity governments that multi-ethnic political representation is imposed from above, regardless of the ethnic composition of the electorate. At the local level of municipal government and at cantonal level in the Federation the constitutional amendments have been used to break the hold of majority political parties elected to power where there is a clear ethnic majority. Representation on the basis of the population census of 1991, rather than on the basis of today's constituents, has meant that in some towns the representatives of the leading political party or even the town mayor may live outside the town, in some cases many miles away, or even in another entity.²⁰ This has heightened political tensions and raised questions over the legitimacy of policy made by people who do not have to live with the consequences of their decisions.

The imposition of new constitutional arrangements which have sought to ameliorate the influence of nationalist political parties has done little to strengthen the BiH political framework. Institutions which are run by politicians elected on few votes, and who have little connection to the people whose lives they are regulating over, have little political legitimacy and are unable to secure wider support for the political settlement.²¹ While the constitutional changes may produce governments which look good on paper, they institutionalize and perpetuate the problems which they seek to address. The fact that these institutions are dependent on international administrators to appoint them and oversee their operation means they perpetuate divisions and external dependencies. As long as the political settlement is dependent on external regulation, the questions of ethnic insecurity and uncertainty over the

future remain. Rather than the nationalist parties losing credibility it would appear that their support is cemented by international manipulation of the political process.²² The use of the 'rule of law' to reform the political process has merely resulted in the undermining of BiH's political institutions. With growing cynicism over the political process, there was little surprise that only just over half the population wished to vote in the elections of October 2002.²³

The Law on Property Return

Annex 7 of the Dayton Peace Agreement, Article 1(1), states that: 'All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them'.²⁴ The issue of property return to displaced people and refugees has been held to be a central part of the struggle to enforce the 'rule of law' against the sectional interests of the main political parties. According to many international policy-makers, refugees and displaced people are up against the self-interest of political elites in two ways:

Bosnians wishing to return to areas where they will be a minority population face a double barrier. Nationalists in their former hometowns work to impede their return through administrative obstruction, intimidation and violence, more often than not with the connivance of local (and higher) authorities. Furthermore, the nationalist elites who rely on these derascinated populations as reservoirs of support also work to prevent their return.²⁵

For the international community, imposing the 'rule of law' would mean 'squeezing' the 'opaque corrupt political and criminal networks' and 'help[ing] uproot the deadwood that has no interest in BiH functioning for its citizens – of any ethnicity'.²⁶ In November 1998 the international community acted to impose legislation in the Federation insisting that the right to repossess pre-war property took precedence over any rights that local authorities had granted to the current occupant. In April 1999 similar laws were imposed in RS.²⁷ These laws were later strengthened and harmonized by the High Representative.²⁸ The implementation of property legislation met with resistance throughout BiH and entailed detailed regulation and enforcement by international agencies, including the UN High Commission for Refugees, the OHR, the Organization for Security and Co-operation in Europe and UN Mission in BiH. The UN International Police Task Force has supervised

local police to ensure that evictions take place and international officials have taken over the running of reluctant local housing offices, setting quotas to be resolved and overseeing the management on a day-by-day basis.²⁹ The High Representative has also used his 1997 Bonn–Petersburg powers to dismiss over 30 mayors and other municipal officials held to have obstructed the implementation of property laws and the exercise of the right to return. Even with the international community effectively running local housing authorities and removing any scope for discretion the solution is not straightforward. This is because property return is a political not a purely legal question.

Studies of the return situation and the imposition of the property legislation suggest that the imposition of law is not the same as refugee return itself. On paper the more coercive international policy seems to be paying dividends. By the end of September 2002 it was reported that 150,000 (62 per cent of applicants) had been successful in reclaiming their property.³⁰ However, forcing through property returns in a situation of uncertainty has merely resulted in the ‘legally dubious but increasingly common practice of selling off property claims before they have been realised’ or in the legally fine but politically counterproductive selling of the property, often to the family which were the former occupants.³¹

Although the imposition of property legislation against the will of local authorities is promoted as a key example where the ‘rule of law’ protections of human rights and equal treatment have taken precedence over Bosnian political will, there is little accounting for the success of this policy on the ground. According to the International Crisis Group: ‘No international organisation or government agency has precise figures on how many Bosnians, after reclaiming their houses or flats – or receiving reconstruction assistance – then decide to sell or exchange them and relocate elsewhere. Both anecdotal evidence and classified advertisements in the newspapers suggest that the practice is widespread.’³²

In fact, the OHR has been happy to connive in the artificial conflation of ‘law’ and ‘reality’ in order to give the impression of progress. In July 2001 the High Representative decreed an end to the two-year moratorium on re-sale in the Federation.³³ After the decree, applications for repossession from refugees ‘shot up’, the motivation being for sales rather than return.³⁴ Along with not keeping figures distinguishing permanent return from selling or exchanging property, the High Representative seems willing to compromise on permanent return in order to boost the success of property law implementation.

The majority of the property law returns have been implemented for socially-owned apartments in urban areas rather than private property in rural areas. This gives a misleading impression as it is precisely urban

municipal properties which are most likely to be exchanged or sold. Permanent return is most often centred on villages because in the towns economic opportunities are scarce, while in the rural areas economic survival is helped through a reliance on subsistence agriculture.³⁵ Even if property sold or exchanged is excluded, many of the properties returned are not occupied by their legal owners and either left vacant or rented out. Media in Sarajevo report that as many as 10,000 reposessed apartments in Sarajevo canton remain empty, representing half the properties reposessed in the canton.³⁶ In Dvar about 500 Serb owners of reposessed and privatized flats have signed rental agreements allowing displaced Croats to stay on. Similar arrangements exist in Foca where Bosniaks have reposessed their flats but have rented them out to displaced Serbs.

Often even where property figures do represent actual returns, the level of return is only a partial one, and does not represent a return to pre-war patterns of integration. In many cases where there is return to pre-war housing, the figures are misleading as only part of the family returns, particularly older family members while school-age children are likely to remain in or be sent back to their 'majority' areas.³⁷ In cities such as Prijedor and Sarajevo, survey results indicate that many people who have returned continue to commute to work in the places where they were formerly displaced.³⁸

The 'rule of law' perspective, as imposed by international administrators, attempts to impose a return to the pre-war situation. After four years of war and eight years of living apart many people have naturally made new lives for themselves, either in Western states, neighbouring states, or in other parts of BiH.³⁹ Former sociology professor at Sarajevo University, Džemal Sokolović, and a Bosniak refugee, argues that the demographic map can never be put back to 1991. Refugees and those displaced with new opportunities elsewhere in BiH or new national citizenship status in Switzerland, Canada or Sweden cannot be expected to return to their previous lives in BiH and, of course, the war dead (estimated at between 30,000 and 250,000) will never return.⁴⁰ While the international community has provided support for the return of refugees, it has been left to municipal authorities to look after the needs of displaced persons who do not want to return to their pre-war housing. This section of society is the most vulnerable group in society, with only tenuous rights to welfare and housing. The imposition of property laws has contributed to these social and economic tensions, causing a secondary displacement of people on a large scale with more than 150,000 families vacating claimed property and another 100,000 facing eviction. Their care falls to local authorities already under tremendous financial strains.⁴¹

However, from the perspective of the international administrators, any attempt to respond to new needs created by population changes brought about by the war and economic and social transition is problematized and seen as preventing a return to the 1991 ethnic balance. Local authority attempts to address the needs of displaced people living within their area are perceived to be criminal actions designed to shore up the gains of ethnic cleansing.⁴² The distribution of building plots, construction materials, business premises and commercial estate to displaced persons is seen as problematic as this 'cements' ethnic cleansing, as does the provision of employment.

Many local authorities have been building new housing, something which would normally be seen as positive in the post-war situation. However, new construction is often seen as questionable because it inevitably reinforces the post-war status quo. In Pale, Sokolac, Srpska Ilidza and Srpsko Novo Sarajevo thousands of new houses and flats have been built to meet the needs of Serbs displaced from the Federation. RS municipalities previously linked to Sarajevo have been particularly active in building commercial enterprises – hotels, cafés and other businesses on socially owned land. Those involved in authorizing and supplying these projects have been investigated by OHR staff. In April 2000 the OHR issued an edict banning the use of socially owned land without explicit OHR permission. In order to build on free land the authorities must petition the OHR for a waiver on the grounds that its use is 'non-discriminatory and in the best interests of the public'.⁴³ A year later, the OHR wrote to all municipal authorities informing them that the waiver system also applied retrospectively to all transactions since 6 April 1992, throwing into question 96 per cent of land transactions made over this time.⁴⁴

Petritsch and his successor Ashdown have sacked town mayors and other municipal officials for the crime of making land allocations without adequate permission.⁴⁵ Yet the OHR was ill-equipped to deal with the enormity of the new powers of decision-making it had awarded itself, covering over 53 per cent of the country's territory, since all urban land, 90 per cent of forests and 10 per cent of agricultural land is socially owned.⁴⁶ Even welfare policies, such as giving low-interest loans to war veterans and the families of those killed, in order to purchase flats in new blocks, have been criticized. All these policies are held by BiH's unaccountable rulers to perpetuate current ethnic imbalances rather than encourage a return to pre-war housing allocations.⁴⁷

The gap between the BiH of 2004 and the BiH of 1991 continually brings out the problematic nature of international 'rule of law' enforcement. When elected representatives respond to the wishes of the

electorate they are held to be pursuing criminal interests or to be ‘cementing ethnic cleansing’. The biggest problem with the imposition of the ‘rule of law’ and focus on the imposed policy aims of the international administrators, rather than political solutions negotiated by Bosnians themselves, is that it is very difficult for society to move forward. There is an open threat that opposition to international regulation will be criminalized along with solutions aimed at enabling people to look forward and establish new lives. Ashdown argues that ‘we’ve invented a new human right here, the right to return after a war’, by which he means not post-war return to one’s country but to reclaim and return to one’s own home.⁴⁸ The ‘human right’ to put the pieces back together to the pre-war status-quo is not one that has been decided upon by the people of post-war BiH.⁴⁹ Across the political parties, regardless of ethnicity, there is a recognition that land allocation policies to displaced people is essential to facilitate returns and restore a sense of security to all ethnic groups.⁵⁰ To date, arguments for the rule of politics, on behalf of those living in BiH, rather than the ‘rule of law’, on behalf of the international bureaucracy, have been rejected by the international administration, and Bosnian calls for a new census to be held have been condemned as seeking to legitimize post-war population shifts.

Law on Employment in Public Institutions

One of the most widely praised legal developments has been the Mrakovica–Sarajevo Agreement of March 2002, referred to above. Section IV of the Agreement covers: ‘proportionate representation in all public authorities, including courts’ and states:

Constituent peoples and members of the group of Others shall be proportionately represented in public institutions in the Federation of BiH and Herzegovina and in Republika Srpska...As a constitutional principle, such proportionate representation shall follow the 1991 census until Annex 7 is fully implemented.⁵¹

In this context, the figures and claims of success for multi-ethnic policing are particularly significant because BiH police forces are the only public institution that the international community had systematically sought to integrate prior to the new constitutional ruling.

In restructuring agreements signed with the Federation in 1996 and Republika Srpska in 1998, the UN set down quotas for the recruitment of ‘minority’ officers. In the Federation, forces were meant to reflect the pre-war national composition of each municipality; in the RS the quotas were less exacting.⁵² As of March 2002 there were 307

non-Serb police officers in RS and 633 Serbs and 'Others' in the Federation. The RS police academy had 562 non-Serb cadets who had graduated or were in training and the Federation academy had 516 Serb cadets.⁵³

The UN Mission in BiH (UNMIBH) was responsible for police reform until the end of December 2002 when the EU assumed responsibility. Former head of the UN mission, Jacques Klein, argues that the police reforms made little difference:

Initially, it was assumed that the rule of law could be achieved solely by reforming the police. The thin slice of the international mandate given to UNMIBH in 1996 was confined to non-executive police reform and restructuring Consequently, there is an imbalance between the components of the rule of law. Local police and corrections personnel have reached a baseline of professionalism and democratic policing. All other elements, namely: courts, judges, prosecutors, legal codes, the rules of evidence and criminal procedure, and witness protection, still require radical reform and restructuring.⁵⁴

Klein's comments indicate the limits of seeking to address the question of post-conflict peacebuilding through the imposition of new laws. The broader problems with the legal system in BiH reveal that the question of rights is intimately tied to broader questions of social, political and economic transformation which cannot be addressed by the swoop of the administrator's pen and sending round a few policemen.⁵⁵

However, it could be argued that even Klein exaggerates the achievements made in this area. The International Crisis Group argues that the numbers are misleading and that few of the ethnic minority police officers are experienced officers of a high rank.⁵⁶ Those that do take employment in areas dominated by another nationality often end up marginalized and sidelined by not being issued with weapons or badges, prevented from participating in investigations or being assigned to menial jobs such as parking attendant.⁵⁷ Studies into police reform in BiH suggest that the top-down imposition of ethnic quotas, while impressive on paper, may well not be sustainable in the absence of international regulation.⁵⁸

Despite the problems with the high profile restructuring of the police along the lines of ethnic proportionality, the international administrators argue that they need to impose ethnic proportionality across the whole public sector. According to the OHR: 'For Republika Srpska, the Agreement states that Bosniaks, Croats and Others have to fill posts in the public administration, from the municipal level to the Entity level, according to the 1991 census. This means 45 per cent of all posts – tens of thousands of jobs.'⁵⁹ The High Representative states that, following

the Agreement in the RS: 'We have so many more opportunities now in the administration, in the judiciary. There are literally hundreds, if not thousands, of new jobs that are now being made available for Croats and for Bosniaks.'⁶⁰

The High Representative's claim that jobs in the public sector should be allocated on the basis of the 1991 census is clearly problematic. With unemployment officially at 40 per cent for BiH as a whole and a weak private sector (accounting for a mere 35 per cent of GDP), public institutions are the largest employers. Any redistribution of public sector jobs in this context will, as the International Crisis Group notes, 'prove difficult for both practical and political reasons'.⁶¹

The motivation for the law based on the 1991 census is the belief that the current distribution of public sector posts needs to be challenged. However the law is not necessarily the best mechanism to do this. In Višegrad, for example, the law insists that 63 per cent of the posts in the municipal government and administration should be held by Bosniaks, despite the fact that they make up only around three per cent of the current post-war population. Further up the Drina valley the law states that in Foča 52 per cent of the public sector jobs should go to the Bosniaks, though they constitute only six per cent of the population today. On the lower Drina in Zvornik, the Bosniak population of 15 per cent is entitled to 59 per cent of government posts.⁶²

The 'public interest', as interpreted by international law-makers, is held to dictate that what is relevant for public sector employment is the population census of 1991 rather than the population situation in 2004. When the 'rule of law' insists that 63 per cent of public sector jobs or of government posts should be preserved for just three per cent of the local population, it is clear that the law will either only be imposed through increasing local antagonisms between ethnic groups or that the law will be ignored, risking economic and political sanctions against the region concerned. Rather than the 'rule of law' guaranteeing the basis for peace and reconstruction, it would appear that these laws are simply statements of intent arising from the minds of international administrators rather than the needs or interests of those affected by them.

As James Heartfield notes, the tendency to develop policies based on the 'good ideas' of bureaucrats, portrays their distance from the societies which they seek to regulate.⁶³ While law-making may seem to be a quick and public show of concern about an issue, the experience of BiH indicates that legal 'solutions' with little relationship to the political context will inevitably have little effect or produce unintended consequences. The high-handed approach of the US-UK 'authority' in Iraq

and the reliance on legal edicts to address political problems can already be seen in the early administrative 'Orders' of the Coalition Provisional Authority. Chief administrator, Paul Bremer's Order No.1, the so-called 'de-Ba'athification' decree had the effect of threatening tens of thousands of public sector Iraqi professionals in education and the health service with dismissal for membership, contributing little to reconstruction or attempts to win support for the regime among the small Iraqi middle class.⁶⁴ Order No.2 dissolved the Iraqi army, making thousands of men unemployed and at a stroke removing the one force best equipped for tackling many of the security tasks.⁶⁵

The 'Rule of Law'?

Even the advocates of the 'rule of law' realize that the external imposition of 'law' has been problematic in BiH. For example, the Democratization Policy Institute suggest:

International experts are poorly poised to craft such sets of laws. The track record of internationals drafting laws for BiH is abysmal. Legal experts who parachute into Sarajevo on six-month contracts, have little grasp of the Bosnian context, no understanding of the language, and who don't have to live with the results of their work, have made a mess of attempts to reform Bosnian statutes. . . . The muddle resulting from internationals drafting detailed statutes leaves the Bosnian people understandably feeling like guinea pigs.⁶⁶

For the Democratization Policy Institute and other policy think tanks the problem is a technical rather than a political one. Internationals involved in the drawing up of laws are too often more focused on 'high salaries, low expenses and a "per-diem rich environment"', resulting in bad laws.⁶⁷

The Democratization Policy Institute recognizes that there is a gap between the laws imposed and the needs and sensitivities of the society in which they are meant to take effect and argues that this gap can be closed by giving selected Bosnians a larger role in the law-making process. They suggest that these Bosnians should be selected by international officials rather than by political representatives: 'Because the Bosnian political system is broken, OHR should not defer to it . . . selecting the small group of Bosnians itself.'⁶⁸ For this influential policy institute, laws should be drawn up by international experts and the OHR, in the light of consultation with local experts. But they stress forcibly that 'Politicians should be excluded'.⁶⁹ For the Institute the problem with external imposition of the law in the 'public interest' is a technical,

not a political one. It is precisely this narrow understanding of both law and politics which is problematic for international administrations such as the one in BiH. No better is promised in Iraq. The US chief administrator hand-picked 25 Iraqi 'representatives' to form a Governing Council, but few of its members represented substantial domestic constituencies and their role was consultative rather than legislative.⁷⁰

The narrow understanding of both politics – which is dismissed as irrelevant to public needs, and of law – which is seen as an off-the-peg external solution, has little in common with the traditional liberal-democratic meaning of the 'rule of law'. The rule of law has historically been understood in relation to the modern democratic framework and in contrast to the rule of bureaucratic regulation or authoritarian repression.⁷¹ The 'rule of law' did not mean merely that there was a set of rules and regulations or laws, backed up by the military, police and the courts. It also meant that this framework was predicated on consent, the equality of rights and the autonomy of individuals. It is important to stress the qualitative difference between the liberal-democratic approach, which derives rights from self-governing human subjects, and the current 'rule of law' approach of externally imposing a rights framework outside of the political process of debate and consensus-building.

The central component of all democratic systems of rights or legal systems, and their theoretical starting point, is the individual's capacity for self-government. The subject of the modern law is a person assumed to be a moral agent or self-willing actor. As a rights-bearing subject the person is not simply coerced into accepting the law by forces outside their influence. The law is seen to be freely accepted and to derive from their will. The framework of regulation of the modern democratic system is historically and logically derived from the formal assumption of equal self-governing individuals, responsible and accountable for their actions and capable of rational decision-making. All modern doctrines of the enforcement of contract, the punishment of crime, the election of governments and the state system of international law rest on this core assumption.⁷² This can be usefully highlighted by a brief consideration of the different facets of a modern state's 'rights-framework' or legal system.

Civil law is the clearest expression of the derivation of the law from the will of the self-governing subject. In enforcing the law of contract, civil law does not impose an alien or external goal onto individuals. In fact, the civil law only binds individuals to their word; this is an expression of the will of the legal subject as the contract is voluntarily made. There is no compulsion to higher policy goals or ends; the only object of the law is the contract between two equal contracting parties.

Criminal law also assumes the equality and free will of the legal subject. The accused is represented at the court in the same way as for breaches of civil law and has the right to defend their interests in court equal to any other citizen. The law is binding on the individual as if it were a contract, although there is no formal contract beyond the assumption of assent to membership of a law-bound community (mythologized in social contract theory). This is clearly only notional assent, but it is through this fiction of consent that the equal rights of defendants before the law are enshrined. In constitutional law, the notional social contract is given content. For all its limitations, the principle of popular sovereignty is a thoroughly radical conception of authority from the people. It argues that the state's authority and legislative legitimacy derives exclusively from the people, rather than any external source, whether this is the 'divine right' of Kings or the 'civilizing' mission of a colonial administration.

This idealized picture reveals the centrality, to all aspects of the modern framework of rights, of the rights-bearing individual with the capacity for self-government. The source of democratic rights and the modern 'rule of law' is the citizen, as an autonomous legal subject, rather than an external body which lays down the law from above. As Hannah Arendt observed, the concept of the 'rule of law', separated from a political framework that involves society in the decision-making process, would inevitably be a hollow one: 'Equality, in contrast to all that is involved in mere existence, is not given us, but is the result of human organisation We are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights.'⁷³

The 'rule of law' approach of international administrators in BiH attaches little importance to the political sphere and state institutions. The essence of the 'bureaucratic gaze' is the belief that the 'rule of law' can be developed and implemented separately from, and in counter position to, the political process.⁷⁴ However, as E.H. Carr noted in his landmark study of international relations, the derivation of modern law from rights-bearing individuals is not merely of historical or philosophical importance:

Law is a function of a given political order, whose existence alone can make it binding . . . Law cannot be self-contained; for the obligation to obey it must always rest on something outside itself. It is neither self-creating nor self-applying. 'There are men who govern,' says a Chinese philosopher, 'but there are no laws that govern.'⁷⁵

While for Carr, 'the ultimate authority of law derives from politics', it is precisely the attempt to separate the sphere of law from that of politics

which is the *sine qua non* of the 'rule of law' approach in BiH.⁷⁶ The attempt to externally impose the 'public interest' through imposing the 'rule of law' from the top-down in fact undermines the creation of any genuine public consensus from the bottom-up through the political process. Removing the process of engagement and participation in the political and legal process gives citizens no sense of ownership of these 'rights' granted by the international administration. The people of BiH may have a legal framework, which institutionalizes their rights, but these imposed rights appear as an oppressive, alien and artificial creation. In the same way, the 'rights' of Iraqi citizens, declared by the US–UK administration, do not appear as rights but as alien impositions and are unlikely to bind society.

If there is any lesson from eight years of international rule over BiH, it is that high-handed intervention to give priority to the 'rule of law' over the political sphere has done little to help overcome insecurities and divisions, while undermining collective political bodies in which Serb, Croat and Bosniak representatives can negotiate solutions. The consequences for Iraq could be even more destabilizing, as security depends on isolating support for terrorist resistance which will be difficult as long as ruling institutions are seen as an illegitimate foreign imposition.⁷⁷

Conclusion

The traditional understanding of the 'rule of law' was the rule of constitutionality.⁷⁸ Law and justice were seen to result from autonomy and self-government. The focus on the 'rule of law' by today's peacebuilding administrators is very different from the post-1945 approach when the importance of state sovereignty vis-à-vis external rule was universally acknowledged. Today, the problematization of the political process in many sovereign states and the demand for international legislative action in the cause of sustainable peacebuilding would seem to reflect the opposite trends, involving the reversal of decolonization.⁷⁹

The current doctrine of peacebuilding posits the 'rule of law' in opposition to self-government. Through viewing the political process as problematic, law appears as an external solution. In the areas considered above, the law has been imposed against the will of the population in the belief that the legal framework is the basis on which post-conflict reconstruction and peacebuilding can be shaped and guided. The experience of BiH would suggest that this legal idealism undermines the political process, the standing of the law and the transition to self-government.

As briefly described above, the imposition of the 'rule of law' in order to enforce political consensus has merely served to discredit the political

process rather than to give it greater authority, as intended. The lesson for Iraq is clear in the lack of popular support behind the Iraqis hand-picked to consult with the US and British administration, and the lack of any possibility for locally accountable representatives to take responsibility for reconstruction. Similar unintended consequences have occurred with regard to the imposition of specific legalization, which allegedly could not be left to BiH politicians, for example, in the areas of housing and employment. The advocates of the 'rule of law' have criticized the slowness of political reform in BiH for producing 'façade democracy' but the housing and employment laws demonstrate that the top-down imposition of the 'rule of law' can be equally artificial, creating a legal façade of universality while in practice institutionalizing ethnic division.

Finally, the danger of prioritizing the 'rule of law' above the political process is the risk of unregulated and arbitrary power. This danger is all too apparent in Iraq under US and British administration where there is no constitutional process of appeal for wrongful detention or capacity to challenge the rule of international administrators. Once the rule of law is separated from the democratic process it becomes the rule of tyranny rather than the rule of justice.

NOTES

1. Paddy Ashdown, 'Broken Communities, Shattered Lives: Winning the Savage War of Peace', Speech to the International Rescue Committee, London, 19 June 2003, accessed at: http://intranet.theirc.org/docs/ashdown_lecture.pdf.
2. Ibid.; see also Paddy Ashdown, 'What Baghdad can learn from BiH', *Guardian*, 22 April 2003. In the Office of the High Representative's 2002 mission statement, *Jobs and Justice our Agenda*, the OHR lays out the mission of the 'rule of law' as being the creation of a system of justice that operates in an equal, impartial and consistent manner across the whole of BiH, supported by a modernized system of governance and public administration and an efficient, effective and integrated law enforcement system capable of fighting crime and terrorism; accessed at: www.orh.int/pic/econ-control-targets/pdf/jobs-and-justice.pdf.
3. Paddy Ashdown, 'Broken Communities, Shattered Lives' (see n.1 above).
4. Ibid.
5. See, for example, Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era* Cambridge: Polity, 1999, pp.6–9; Martin Shaw, 'War and Globality: the Role and Character of War in the Global Transition', in Ho-won Jeong (ed.), *The New Agenda for Peace Research*, London: Ashgate, 1999, pp.61–80; see also Mark Duffield, *Global Governance and the New Wars: the Merging of Development and Security*, London: Zed Books, 2001.
6. R. Jeffrey Smith, 'Kosovo Still Seethes as UN Official Nears Exit', *Washington Post*, 18 Dec. 2000.
7. See, for example, Michael Ignatieff, *Empire-Lite: Nation-Building in BiH, Kosovo and Afghanistan*, London: Vintage, 2003 and Simon Chesterman, 'Walking Softly in Afghanistan: The Future of UN State-Building', *Survival*, Vol.44, No.3, 2002, pp.37–46.

8. Jeffrey Smith, 'Now for Nation Change. Law and Order: The Military doesn't want to Touch it. Who Will?', *Washington Post*, 13 April 2003; United States Institute of Peace, *Establishing the Rule of Law in Iraq*, Special Report 104, April 2003, accessed at: www.usip.org/pubs/specialreports/sr104.html.
9. Report of the Panel on UN Peace Operations, A/55/305-S/2000/809, §81, accessed at: www.un.org/peace/reports/peace_operations. See also, David Chandler, 'The People-Centred Approach to Peace Operations: The New UN Agenda', *International Peacekeeping*, Vol.8, No.1, 2001, p.1–19.
10. See, for example, United States Institute of Peace (n.8 above); *A Review of Peace Operations: A Case for Change*, London: Kings College and International Policy Institute, 2003.
11. 'After the War', editorial, *Washington Post*, 24 Nov. 2002. Ashdown argues that the rule of law only became the administration's top priority in its sixth year, rather than in its first (in 'Broken Communities, Shattered Lives' (n.1 above). However, the transition to the active imposition of legislation and dismissal of elected representatives can be dated back to the Bonn meeting of the Peace Implementation Council in December 1997. See 'Bonn Peace Implementation Conference 1997: "Bosnia and Herzegovina 1998: Self-Sustaining Structures"', 10 Dec. 1997, Office of the High Representative, accessed at: www.oscebih.org/essentials/pdf/bonnpeace_implementation_council_eng.pdf. For further information see David Chandler, *Bosnia: Faking Democracy after Dayton*, London: Pluto Press, 1999.
12. Will Hutton, 'Alone the US will fall', *Observer* (London), 24 Aug. 2003.
13. 'Decision establishing interim procedures to protect vital interests of Constituent Peoples and Others, including freedom from Discrimination', 11 Jan. 2001, Office of the High Representative, accessed at: www.ohr.int/decisions/statematters/default.asp?content_id=365; European Stability Initiative, 'Imposing Constitutional Reform? The Case for Ownership: A Discussion Paper', *ESI BiH Report*, No.13, Berlin/Sarajevo, 20 Mar. 2002, p.2.
14. 'Agreement on the Implementation of the Constituent Peoples' Decision of the Constitutional Court of Bosnia and Herzegovina', 27 March 2002, Office of the High Representative, accessed at: www.ohr.int/ohr-dept/legal/const/default.asp?content_id=7274.
15. Dragan Bisenić, 'Interview: Wolfgang Petritsch, the High Representative in BiH: "New Solutions are not emergency measures for Balkans"', *Danas*, 10 Apr. 2002, accessed at: www.ohr.int/ohr-dept/press/pressi/default.asp?content_id=7387.
16. 'Press Conference of the High Representative, Wolfgang Petritsch, on the Completion of the Constitutional Reform Process in Bosnia and Herzegovina's Entities', 19 Apr. 2002, Office of the High Representative, accessed at www.ohr.int/ohr-dept/press/pressb/default.asp?content_id=7503.
17. 'Agreement' (n.14 above), section available at 7274#2.
18. *Ibid.*, accessed at: *ibid.*, 7274#3.
19. *Ibid.*
20. This heightened already existing problems of representation, see Chandler, *Bosnia* (n.11 above), pp.66–89. See also International Crisis Group, 'The Continuing Challenge of Refugee Return in BiH and Herzegovina', *ICG Balkans Report*, No.137, Sarajevo/Brussels, 13 Nov. 2002, p.26. For many BiH commentators the use of the 1991 census as a way of distributing political positions increases the legitimacy of the nationalist parties: 'As if the dead can vote. And even if they could, as if they would be voting for them again. Why then elections, after all?' Džemal Sokolović, 'Bosnia–Herzegovina Country Report', in Wim van Meurs (ed.) *South Eastern Europe: Weak States and Strong International Support, Prospects and Risks Beyond EU Enlargement*, Vol.2, Opladen: Leske and Budrich/Bertelsmann Foundation, 2003.
21. See, David Chandler, 'Anti-Corruption Strategies and Democratization in Bosnia–Herzegovina', *Democratization*, Vol.9, No.2, 2002, pp.101–20.

22. See, for example, Florian Bieber, 'Croat Self-Government in Bosnia—A Challenge for Dayton', European Centre for Minority Issues, *ECMI Brief*, No.5, May 2001; International Crisis Group, 'Turning Strife to Advantage: A Blueprint to Integrate the Croats in BiH and Herzegovina', *ICG Balkans Report*, No.106, Sarajevo/Brussels, 20 Mar. 2001.
23. Turnout was 54.68 per cent, compared to 64.4 per cent in 2000 and, according to the OHR, 'young people in particular did not vote'. 'Report to the European Parliament by the OHR and EU Special Representative for BiH, July–December 2002', OHR, 23 Dec. 2002, accessed at: www.ohr.int/archive/rep-eur-parl/default.asp?content_id=30140.
24. *The General Framework Agreement*, Annex 7: 'Agreement on Refugees and Displaced Persons', accessed at: www.ohr.int.dpa/default.asp?content_id=375.
25. Democratization Policy Institute, *An Agenda for BiH's Next High Representative*, 1 May 2002, p.12, accessed at: www.anonime.com/dpinstitute/europe/balkans/BiH_and_Herzegovina/20020501_BiH_agenda.pdf.
26. *Ibid.*
27. See '[High Representative's] Decision suspending decision-making on claims to apartments in the Federation for which a permanent occupancy right was issued after 30 April 1991, and imposing a moratorium on sale of apartments to persons who acquired their occupancy right after 30 April', Office of the High Representative, 5 Nov. 1998, accessed at: www.ohr.int/decisions/plipdec/default.asp?content_id=151; '[High Representative's] Decision cancelling all permanent occupancy rights issued in the RS during and after the war in BiH and converting them into temporary occupancy rights', Office of the High Representative, 14 April 1999, accessed at: www.ohr.int/decisions/plipdec/default.asp?content_id=161.
28. In 1999 no less than 38 separate acts of legislation were imposed by the High Representative in the field of Property Laws, Return of Displaced Persons and Refugees and Reconciliation. See further: www.ohr.int/decisions/plipdec/default.asp?m=&yr=1999.
29. International Crisis Group, 'The Continuing Challenge' (n.20 above), p.9; *A New Strategic Direction: Proposed Ways Ahead For Property Law Implementation in a Time of Decreasing IC Resources*, Property Law Implementation Plan, 12 Sept. 2002, accessed at: www.ohr.int/decisions/plip/key-doc/default.asp?content_id=27904.
30. International Crisis Group, 'The Continuing Challenge' (n.20 above), p.1.
31. Daniela Heimerl, 'The Return of the Refugees: Fiction and Reality', paper presented at Fifth International Seminar, 'Democracy And Human Rights In Multiethnic Societies', Institute For Strengthening Democracy in BiH, Konjić, 8–12 July 2002.
32. International Crisis Group, 'The Continuing Challenge' (n.20 above), p.11.
33. 'Amending the Law on Sale of Apartments with Occupancy Rights', Office of the High Representative, 17 July 2001, accessed at: www.ohr.int/decisions/plipdec/default.asp?content_id=129.
34. International Crisis Group, 'The Continuing Challenge' (n.20 above), p.11.
35. *Ibid.*, p.10.
36. *Ibid.*, p.11.
37. *Ibid.*
38. *Ibid.*, p.2.
39. There have also been major demographic shifts brought about the war and economic transformation which have little connection to concerns of being in a position of an ethnic minority. For example, many people from rural areas who moved to towns and cities for safety during the war have decided to stay put.
40. Džemal Sokolović (n.20 above). Sokolović cites a large Swedish government research project, undertaken in 2000. Bosnian refugees in Sweden were asked: 'Do you want to return home?' Only six per cent gave a positive response, 94 per cent said they want to stay in Sweden. When the Swedish government offered the six per cent an attractive financial support package to return, half of them refused. Of the three per cent who took up the offer many returned to Sweden within the year.

41. European Stability Initiative, *From Dayton to Europe: Land, Development and the Future of Democratic Planning* (draft version for circulation to OHR only), ESI, Berlin/Sarajevo, 12 Dec. 2002, p.14.
42. This approach – whereby post-conflict legislators attempt to compensate victims and not perpetrators – forgets, as Rama Mani’s comparative study notes, first, that these two groups overlap each other, and second, that post-conflict solutions depend not on the perpetuation of divisions but rather on the development of forward-looking approaches which focus on the ‘community of survivors’. See her authoritative *Beyond Retribution: Seeking Justice in the Shadows of War*, Cambridge: Polity, 2002.
43. ‘Decision on re-allocation of socially owned land, superseding the 26 May 1999 and 30 December 1999 Decisions’, Office of the High Representative, 27 April 2000, accessed at: www.ohr.int/decisions/plipdec/default.asp?content_id=123.
44. European Stability Initiative, *From Dayton to Europe* (n.41 above), pp.3–9.
45. International Crisis Group, ‘The Continuing Challenge’ (n.20 above), p.13.
46. European Stability Initiative, *From Dayton to Europe* (n.41 above), p.3.
47. International Crisis Group, ‘The Continuing Challenge’ (n.20 above), p.12. This is challenged by the European Stability Initiative report *From Dayton to Europe* which suggests that the provision of land and property for displaced persons in fact facilitates minority return by freeing up property and reducing ethnic tensions.
48. *Ibid.*, p.39.
49. Nor one insisted upon by the Dayton Agreement itself which, under the constitutional rules of Annex 4, explicitly guarantees the ‘right to liberty of movement and residence’, accessed at: www.ohr.int/dpa/default.asp?content_id=372.
50. European Stability Initiative, *From Dayton to Europe* (n.41 above), p.30.
51. ‘Agreement’ (n.14 above), section available at: www.ohr.int/ohr-dept/legal/const/default.asp?content_id=7274#4.
52. International Crisis Group, ‘Policing the Police in BiH: A Further Reform Agenda’, *ICG Balkans Report*, No.130, Sarajevo/Brussels, 10 May 2002.
53. European Stability Initiative, ‘Imposing Constitutional Reform?’ (n.13 above), p.5.
54. Jacques Paul Klein, ‘UN Security Council Briefing’, 19 June 2002.
55. See, for example, ‘Bosnia and Herzegovina in South-East Europe’, ch.5 in Michael Pugh and Neil Cooper with David Goodhand, *War Economies in a Regional Context: Challenges of Transformation*, Boulder CO: Lynne Rienner, 2004.
56. International Crisis Group, ‘The Continuing Challenge’ (n.20 above), p.16.
57. *Ibid.*, pp.17, 28. The International Crisis Group states: ‘The practice of not issuing firearms to “minority” officers appears to be widespread. In Vlasenica, where there are 83 Serb police officers and four Bosniaks, none of the later has received side arms. The RS MUP argues that this is due to lack of funds, but has rejected a suggestion by IPTF to rotate firearms among officers on duty.’ International Crisis Group, ‘Policing the Police’ (n.52 above), p.41.
58. See for example, Gemma Collantes Celador, ‘International Civilian Police Missions in War-Torn Societies – From Theory to Practice in BiH and Kosovo’, paper presented at the Fifth International Seminar ‘Democracy and Human Rights in Multiethnic Societies, Institute for Strengthening Democracy in BiH, Konjić, 8–12 July 2002.
59. Alexandra Stiglmayer, Head of the OHR Press Office, ‘Constitutional Reform in BiH: RS is becoming multi-ethnic’, editorial, *Jutarnje Novine*, 15 Apr. 2002, accessed at: www.ohr.int/ohr-dept/press/press/default.asp?content_id=7397.
60. ‘Press Conference’ (n.16 above).
61. International Crisis Group, ‘The Continuing Challenge’ (n.20 above), p.38.
62. *Ibid.* Figures based on the contrast between 1991 census figures and current numbers of Bosniak inhabitants, assuming the overall population of the towns remains constant.
63. James Heartfield, *The Death of the Subject Explained*, Sheffield: Sheffield Hallam University, 2002, p.193.

64. Coalition Provisional Authority, Order No.1, 'De-Baathification of Iraqi Society', 15 May 2003, accessed at: www.cpa-iraq.org/regulations/CPAORD1.pdf; Jonathon Steele, 'US decree strips thousands of their jobs', *Guardian*, 30 Aug. 2003.
65. Coalition Provisional Authority, Order No.2, 'Dissolution of Entities', 23 May 2003, accessed at: www.cpa-iraq.org/regulations/CPAORD2.pdf.
66. Democratization Policy Institute (n.25 above), p.15.
67. Ibid.
68. Ibid.
69. Ibid.
70. Coalition Provisional Authority, Regulation No.6, 'Governing Council of Iraq', 13 July 2003, accessed at: www.cpa-iraq.org/regulations/REG6.pdf; Charles Clover, 'Row mars first meeting of Iraq interim council', *Financial Times*, 14 July 2003; Isam al-Khafaji, 'I did not want to be a collaborator', *Guardian*, 28 July 2003.
71. Albert. V. Dicey, *Introduction to the Study of the Law of the Constitution*, London: Macmillan, 1959, pp.202–3.
72. James Heartfield, 'Rights and the Legal Subject', unpublished Freedom and Law discussion paper, 1996.
73. Hannah Arendt, *The Origins of Totalitarianism*, New York: Harvest (new edn), 1979, pp.300–301.
74. David Chandler, 'The Bureaucratic Gaze of International Human Rights Law: A Case Study of BiH', paper presented at 'The Legalisation of Human Rights: A Multidisciplinary Conference', Clare Management Centre, University College London, 25–26 April 2003.
75. Edward H. Carr, *The Twenty Years Crisis, 1919–1939: An Introduction to the Study of International Relations*, London: Palgrave, 2001, p.165.
76. Ibid, p.166.
77. The limitations of the view that the imposition of 'the rule of law' could be a solution to security problems were highlighted by growing instability in Iraq and Afghanistan in August 2003. See for example, 'Remember Afghanistan?', editorial, *Guardian*, 19 Aug. 2003; and responses to the bomb at the UN headquarters in Baghdad which resulted in the tragic death of the head of mission, UN Special Representative Sergio Vieira de Mello. In a sad irony, de Mello was one of the few high-level diplomats who had argued that greater political legitimacy could do more to promote security than more law-making or military and police re-enforcements. See James Bone, 'Dashing diplomat favoured by Bush', *The Times*, 20 Aug. 2003; and, in particular, Jonathon Steele, 'De Mello knew sovereignty, not security, was the issue', *Guardian*, 21 Aug. 2003.
78. See, for example, Robert H. Jackson, *Quasi-states: Sovereignty, International Relations and the Third World*, Cambridge: Cambridge University Press, 1990, pp.95–8.
79. The report of the International Commission on Intervention and State Sovereignty (ICISS) notes that the shift towards international administrations and the weakening of the doctrine of state sovereignty, particularly for smaller, non-Western powers, is 'comparable to decolonization, but operating in reverse gear', ICISS, *The Responsibility to Protect: Research, Bibliography, Background*, Ottawa: International Development Research Centre, 2001, p.199.