IRAQ’S DE-BA’THIFICATION: RATIONALES AND IMPLEMENTATION OF A CONTESTED TRANSITIONAL JUSTICE MECHANISM

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DEDICATION

To my son, Berk Zeren,

who is my source of motivation and inspiration…
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Aysegul Keskin Zeren

February 2014

Cleveland, OH
CHAPTER 1

Introduction

“When the order took effect, I explained, we could sort out ‘the sheep from the goats’. But we’d have to move quickly to quash the impression that the Coalition had toppled Saddam only to hand power to the next level of Ba’thists. Although the order would bar only about 1 percent of Baath Party members from public service, I wanted to be sure we were focused on the right people”.
—L. Paul Bremer III

“They’ve been used by Saddam, although a lot of them were victims of his policies. But to a different degree, they participated in all these crimes that happened in Iraq…I think they have to be managed, as after the Second World War. So, it is reasonable to say, ‘Yes, there was a good man, Mr. So-and-So, in Berlin. Although he was a Nazi, he never committed a crime.’ Yes, but he was a participant”
—Kurdish man, Sulaimaniyah

"My hands are not stained with blood. They are stained with chalk."
—Sihama Khalaf, purged elementary school teacher

1.1 Research Question and Argument

Mechanisms of transitional justice (post-conflict justice) are used by post-conflict societies emerging from authoritarianism or civil war(s) as they confront the crimes and injustices of the past. Transitional justice mechanisms were effectively utilized following


the collective atrocities that dominated the 20th and early 21st centuries. The demand for adopting these mechanisms comes from either national and local groups or international bodies such as nongovernmental and intergovernmental organizations. In some cases international pressure comes in the form of top-down imposition of a transitional justice mechanism by occupying forces.

The earliest transitional justice efforts can be traced back to Nuremberg and the de-Nazification efforts of post-World War II. After the dissolution of the Soviet Union, many lustration programs were enacted in Central and Eastern Europe (CEE). Hybrid tribunals in Sierra Leone and Cambodia followed the establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). Many truth commissions were set up in different parts of the world following the transitions from authoritarianism and from the civil wars. One of the most studied and well-known commissions is the South African Truth and Reconciliation Commission that was established in 1995. There were also local transitional justice mechanisms initiated, such as Gacaca courts in Rwanda. Moreover, amnesties, reparations, memorials, commemorations, trauma treatments, and different types of reforms were utilized by many post-conflict societies in order to encourage reconciliation, national peace, and unity.

Many scholars have been greatly interested in studying these transitional justice mechanisms in the last couple of decades. Despite this increased interest in transitional
justice, vetting/lustration/purging⁴ has continued to be the least studied mechanism of all. Many post-World War II and post-communist European countries endorsed some form of vetting/lustration/purging. De-Ba’thification of Iraq is the latest effort that can be investigated under this category even though it will described as a purging process after the terms vetting, lustration and purging are defined. Government officials from the Saddam Hussein government were purged in 2003, and many institutions that were connected with the brutalities of the Ba’th party were dissolved under a program that was borrowed in part from the de-Nazification program, which was established in Germany after World War II. The process of de-Ba’thification in Iraq provides a unique case study for vetting/lustration/purging literature, not only because it is the latest example, but also because it was initiated and administered by an occupying power whose policies contributed to a countrywide insurgency. Documenting the details of de-Ba’thification through scientific research is one of the significant contributions of this study.

The main questions of this dissertation include: What were the rationales for de-Ba’thification? How was it designed and implemented? To what degrees were the rationales incorporated in the design and implementation of de-Ba’thification?

A deeper understanding of de-Ba’thification of Iraq will be achieved through these questions as they will provide valuable insight into policy-making and implementation for policy makers that goes well beyond the Iraqi context for several

⁴ Vetting is defined as “assessing integrity to determine suitability for public employment” in The Vetting Public Employees in Post-conflict Settings: Operational Guidelines. Vetting, lustration, and, purging are often used interchangeably in the literature. The differences between these practices are explained in Chapter 2.
reasons. First, the rationales of any disqualification program can be numerous and distinctive for different stakeholders. The existing literature presents numerous rationales for vetting\(^5\) (Duthie 2007, 30), which vary according to the context of the political transition and the time period. In general, the immediate rationales for engaging in such a process are to neutralize the influence of the former regime in the new political situation. The broader and long-term aims are to transform institutions to facilitate the democratic transformation and to prevent future human rights abuses. Even though these short-term and long-term rationales are the common motivation, each country and each interested party might have individual and unique reasons for adopting a vetting process. More importantly for this case, I argue that these rationales can vary across different interested parties. Rationales that are presented by occupying forces and Iraqi officials for adopting de-Ba’thification might be different than each other and Iraqi citizens might have different interpretations of these rationales presented to them. Also, I argue that because none of these groups are homogenous, there might not consensus within a group regarding what these rationales should be and how they are interpreted. For instance, the occupying forces include different decision-making bodies such as the U.S. Department of Defense (DoD), U.S. Department of State (DoS), Coalition Provisional Authority

\(^{5}\) While citing studies in the field, I will use only the term the authors choose to use to prevent any misinterpretation and confusion.
(CPA), and Organization for Reconstruction and Humanitarian Assistance (ORHA). These groups might have different and sometimes conflicting rationales that they utilize with the purpose of justifying or impugning the de-Ba’thification process. Moreover, Iraqi officials who were actively involved in the decision-making process or implementation of de-Ba’thification might come up with entirely different reasons for adopting such a process. Those who were directly or indirectly affected by de-Ba’thification measures might have different ideas about what the goals of de-Ba’thification should be. Also, those involved in the de-Ba’thification process might have their own unique rationales and interpret existing rationales in their own way. Understanding and acknowledging these context-specific expectations and rationales is of paramount importance to those who design a disqualification program because the design should aim to ensure that the process itself contributes to these rationales (Mayer-Rieckh 2007, 504).

Second, understanding the planning and implementation process of any disqualification effort is as crucial as learning the different and divergent rationales within that process in order to observe how the goals are fulfilled. Designing any transitional justice initiative requires careful planning. Good timing, respecting international standards, fulfilling domestic and local needs, as well as valuing the ethnic composition of the society are vital elements of any design process. Design decisions that respect the needs of the society play a significant role in the success of transitional justice mechanisms. Putting these decisions into practice along with clear guidelines, necessary resources, responsibility, and well-built oversight mechanisms might be challenging
given the limited resources in transitional contexts but contributes to the outcome of the process.

Third, in order to make more accurate assessments about the outcome of the disqualification effort, it is particularly important to understand the amount of symmetry that does or does not exist between the rationales for disqualification and its design and implementation. The design of vetting and its implementation need to ensure that the process contributes, to the greatest extent possible, to the envisioned aims of a transitional society in order to minimize the risk of failure (Mayer-Rieckh 2007).

1.2 Transitional Justice

In order to delve into the research questions, it is essential to put de-Ba’thification in a context. In this section, I will briefly discuss the development of the field of transitional justice, its goals, mechanisms, benefits and risks.

Following a period of political change, transitional justice is the set of judicial and non-judicial mechanisms designed to address the legacies of massive human rights abuses (O’Donnell and Schmitter 1991; Kritz 1994; Teitel 2000; Duthie 2007; Olsen et al. 2010; Nalepa 2010). Some of the goals that transitional regimes have sought to advance through transitional justice mechanisms are to provide individual accountability, establish truth about the past, acknowledge and redress victims’ suffering, deter future human rights violations, foster reconciliation and healing, punish perpetrators, establish the rule of law, consolidate democratic institutions, and provide national peace and unity (Cohen 1995; Horne and Levi 2004; Amstutz 2005).
Transitional regimes utilize different mechanisms to achieve these goals, such as: domestic or international criminal prosecutions and trials, reparation and compensation programs, institutional reforms, truth commissions, forgiveness, memorialization, selective, conditional or general amnesty, and vetting/lustration/purging. There are some studies classify these mechanisms. Since de-Ba’thification can be listed under the category of vetting/lustration/purging, it is particularly important to understand the place of vetting/lustration/purging, in these classifications. For instance, Luc Huyse (1995) provides a taxonomy of transitional justice mechanisms by highlighting two issues: acknowledgement and accountability. If criminal prosecution is in the radical interpretation of acknowledgement and accountability end of the spectrum, amnesty will be placed on the other end and disqualification lies somewhere in between (Huyse 1995, 51-53). Amstutz lists transitional justice approaches along a continuum of increasing accountability, ranging from denial to full accountability in terms of alternative conceptions of justice: retributive and restorative (2005, 18). Purge, as he explains, is in the retributive justice and high accountability end of the continuum following trials.

**Figure 1-1. Transitional Justice Strategies**

<table>
<thead>
<tr>
<th>DENIAL</th>
<th>ACCOUNTABILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amnesia, Amnesty, Forgiveness</td>
<td>Truth Telling, Reparations, Purges, Trials</td>
</tr>
</tbody>
</table>

Note: From Amstutz 2005, 18

Similar to Amstutz’s continuum of transitional justice strategies is Grodsky’s justice spectrum in which he categorizes the range of transitional justice responses based
on their degree of harshness or leniency toward the members of the old regime. Purging is viewed as one of the harshest mechanisms following the criminal prosecutions.

Figure 1-2. Transitional Justice Spectrum

<table>
<thead>
<tr>
<th>Lenient</th>
</tr>
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<tbody>
<tr>
<td>1. Cessation and codification of human rights violations</td>
</tr>
<tr>
<td>2. Rebuke of the old system</td>
</tr>
<tr>
<td>3. Rehabilitation and compensation for victims</td>
</tr>
<tr>
<td>4. Creation of a truth commission</td>
</tr>
<tr>
<td>5. Purging human rights abusers from public functions</td>
</tr>
<tr>
<td>6. Criminal prosecutions of “executors”</td>
</tr>
<tr>
<td>(those lower on the chain-of-command)</td>
</tr>
<tr>
<td>7. Criminal prosecutions of commanders</td>
</tr>
<tr>
<td>(those higher on the chain-of command)</td>
</tr>
</tbody>
</table>

| Harsh                                                                 |

Since ancient times, providing justice had always been an essential component of any transition. For instance, the purges of the evil cities of Sodom and Gomorrah (Teitel 2000), the restorations of Athenian democracy in 411 and 403 B.C. (Elster 2004), the measures of retribution and reparation in France after the two Bourbon Restorations in 1814 and 1815 (Elster 2004), and post-Civil war Reconstruction in the United States of America (Teitel 2000) are the examples of some of early transitional justice efforts that are presented in the literature.

Although the origins of modern transitional justice dates back to World War I, the term “transitional justice” became well-known in the post-World War II period with the Nuremberg and Japanese military trials (Teitel 2003, 70). Ruti Teitel illustrates in her renowned article *Transitional Justice Genealogy* that since 1945 transitional justice evolved in three phases. The first phase is associated with interstate cooperation, war
crimes trials, and sanctions, which lasted until the beginning of the 1950s when a stable bipolar balance of power led to a political equilibrium and an impasse on transitional justice world (Teitel 2003, 70).

The second or post–Cold War phase is associated with the wave of democratic transitions and modernization that began in 1989 with the fall of Berlin Wall and the dissolution of the Soviet Union. In this phase, transitional justice moved beyond retributive justice and enabled dialogue between victims and their perpetrators. The transitional dilemmas “were framed in terms more comprehensive than simply confronting or holding accountable the predecessor regime, and included questions about how to heal an entire society and incorporate diverse rule-of-law values, such as peace and reconciliation, that had previously been treated as largely external to the transitional justice project” (Teitel 2003, 77).

The last phase, which we are currently in, is referred to as the steady-state of transitional justice. Today, transitional justice is in its normalization and expansion process. It has been increasingly used in ordinary rather than extraordinary situations, such as war in a time of peace, political fragmentation, and small wars that characterize contemporary developments (Teitel 2003, 89-90).

Throughout the years, pursuing transitional justice became imperative for any society that has recently transitioned from an autocratic to a democratic regime, because the functioning of democracy can only be possible by coming to terms with the painful elements of the past (O’Donnell and Schmitter 1991, 30). As Tina Rosenberg explains, “[n]ations, like individuals, need to face up to and understand traumatic past events
before they can put them aside and move on to normal life” (1995, xviii). Thus, transitional justice cannot be ignored, only be impeded to be dealt with later (Grodsky 2011).

The new democracy has to assure the society that the violations will not recur. The International Center for Transitional Justice (ICTJ) sources show that historically nations who do not address massive abuses, are more likely to have social divisions in society, mistrust between groups and state institutions, less security and development, and most dangerously the recurrence of violence. Despite the benefits of pursuing transitional justice, there might be some potential risks one should consider before establishing a transitional justice mechanism. For instance, Martha Minow distinguishes between retroactivity, politicization, and selectivity (1998, 30-31). Retroactivity deals with punishing individuals for acts that were not considered illegal at the time they were committed. Politicization means rather than functioning as an independent institution that respects impartiality and universal norms being under political games and pressures. Selectivity encompasses targeting only a small portion of those accused. Other risks of any judicial and non-judicial transitional justice mechanism may include destabilization which refers to pursuing justice and highlighting past abuses that may re-escalate conflicts and risk the peace processes and further re-traumatize victims (Kerr and Mobekk 2007, 8-10). In order to diminish these risks, transparency, consistency, and careful planning are critical throughout the process (Kerr and Mobekk 2007, 10).

Former Secretary-General Kofi Annan also stresses, in his well-known 2004 report to the Security Council entitled The Rule of Law and Transitional Justice in
Conflict and Post-Conflict Societies, “We [the international community] must learn…to eschew one-size-fits-all formulas and the imposition of foreign [transitional justice] models…” (2004, 1) because these models do not serve the needs and aspirations of national and local communities (Hancock and Keskin Zeren 2010).

1.3 The Case: De-Ba’thification

In March 2003, the US invaded Iraq. However, de-Ba’thification plans became public in February 2003. Karen DeYoung and Peter Slevin introduced the plan to the US public with an article titled “Full U.S. Control Planned for Iraq.” It appeared in the Washington Post as follows: “Iraqi government officials would be subjected to ‘de-Ba’thification,’ a reference to Hussein's ruling Baath Party, under a program that borrows from the ‘de-Nazification’ program established in Germany after World War II” (DeYoung and Slevin 2003).

On January 20, 2003, before the war, President George W. Bush signed the National Security Presidential Directive # 24 (NSPD 24) and handed the control of postwar Iraq to the DoD. Immediately after this directive Donald Rumsfeld created the ORHA (Ferguson 2008, 71-72). ORHA, with the leadership of Lt. General Jay Garner, a retired U.S. Army General, began implementing a pragmatic and incremental de-Ba’thification process. Looking back during a 2007 interview with Charles H. Ferguson in his No End in Sight documentary, Jay Garner explained that ORHA implemented the unwritten de-Ba’thification policy by bringing all the officials [who were in office before the invasion] back into the system and letting Iraqis themselves identify the “bad guys” (Ferguson 2008, 146). De-Ba’thification, however, became public after General Tommy
R. Franks’ famous “Freedom Message” to the Iraqi people. In the same speech, he established the CPA, a temporary body that was responsible for the administration of the government and the process of disestablishment of the Ba’th party, armed forces and security organizations. Therefore, the CPA had replaced the ORHA. Franks ordered,

Members of the armed forces and security organizations shall lay down their arms, stay away from their weapons, and remain in place. They shall obey the orders of the nearest Coalition military commander. All other Iraqis should continue their normal daily activities; officials should report to their places of work until told otherwise. All those engaged in the delivery of essential services should return to their jobs. The Arab Socialist Renaissance Party of Iraq (Hizb al-Ba’th al-Arabi al-Ishiraki al-Iraqi) is hereby disestablished. Property of the Ba’th Party should be turned over the Coalition Provisional Authority. Saddam Hussein’s intelligence and security apparatus, the Al-Mukhabarat al-Iraqiya, is hereby deprived of all powers and authority (Freedom Message to the Iraqi People 4/16/2003).

On May 6, 2003, L. Paul Bremer, III was appointed as Garner’s successor, and the head of the newly created CPA. When Paul Bremer was on his way to Iraq, he told Douglas Feith that he wanted his arrival to have a symbolic theme. Hence, promising Iraqis that Ba’thists are not coming back was the perfect move (interview with Douglas Feith November 29, 2010). Paul Bremer later explained in his memoir,

> Among all my other instructions, Rumsfeld’s memo emphasized: ‘The Coalition will actively oppose Saddam Hussein’s old enforcers….We will make clear that the Coalition will eliminate the remnants of Saddam’s regime. Under Secretary Douglas Feith had shown me a draft order for the ’De-Ba’thification of Iraqi Society; …I scanned the decree … ‘We’re thinking of having Jay [Garner] issue the order today’ Feith had said. ‘Hold on a minute,’ I said. ‘I agree it’s a very important step, so important that it should wait ‘til I get there’… I had told Feith I would discuss the timing of the decree with Ryan Croker [a Deputy Assistant Secretary of State for Near Eastern Affairs] and our CPA Governance Team… after I got out to Baghdad (Bremer and McConnell 2006, 39-40).

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6 Don Rumsfeld had given marching orders in a memo to Bremer on May 9.
Bremer arrived in Baghdad on May 12, 2003, and within four days he assessed the decree with other CPA officials. Despite many concerns and criticisms, Bremer insisted that he was ordered to execute de-Ba’thification. On May 16th, he issued the CPA Order #1: “De-Ba’thification of Iraqi Society.”  

The goal was eliminating the threat to the security of the Coalition forces by purging Ba’th party members and collaborators, prohibiting symbols and images that glorify Saddam Hussein and his party. Specifically, this order aimed to remove full members of the Ba’th Party holding ranks of Regional Command Member (’udw qutriyya), Branch Member (’udw far’), Section Member (’udw shu’ba), and Group Member (’udw firqa) from their posts and ban them from future employment in the public sector. With this order, the CPA also planned to vet the individuals holding positions in the top layers of administration in every national government ministry, affiliated corporations and other government institutions including universities and hospitals for possible affiliation with the Ba’th Party. Yet, exemptions or exceptions that could be granted by the administrator (Paul Bremer) or his designees were assured to ease the process. Furthermore, this order prohibited the displays of the images of Saddam Hussein and symbols of Ba’th Party from public spaces.

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7 See Appendix A.
8 Senior, full, high-level, and top-level members were used interchangeably to describe those who hold party membership status of ’udhu firqa or above throughout the interviews conducted and documents analyzed. Also, low-level or regular members refer to those who hold party membership status lower than ’udhu firqa. For more information on party hierarchy see Figure 4.1 Ba’th Party Membership Hierarchy
9 Translation of party hierarchy here is borrowed from CPA Order #1.
On May 23, 2003, Bremer issued the CPA Order #2 “Dissolution of Entities.” This order was the most criticized application of de-Ba’thification. With this order, the Iraqi Army, Air Force, Navy, the Air Defense Force, Iraqi Republican and Iraqi Special Republican Guards, Emergency Forces, Al Quds Force and the Directorate of Military Intelligence were dissolved. Other dispersals included: the Ministries of Defense, Information, State for Military Affairs; Iraqi Intelligence Service; National Security Bureau; Directorate of General Security; Special Security Organization; Hussein’s Murafaqin (Companions) and Himaya al Khasa (Special Guard); and various organizations and paramilitaries. These two orders officially started the de-Ba’thification process in Iraq.

Subsequently, with the CPA Order # 5, the Iraqi De-Ba’thification Council (IDC) was established in order to investigate the identity of Ba’th party members and to gather information on the current status of all Iraqi Ba’th Party assets (Stover et al. 2005, 845). On June 3, 2003, with the aim of speeding up the process, the CPA issued instructions to the Coalition Forces Commander. These instructions authorized the Commander to establish the Accreditation Review Committees (ARCs) —to undertake the functions of the IDC (Hatch 2005, 104-105; Stover et al. 2005, 846). Bremer’s aim of transferring the responsibility to domestic actors, like his World War II predecessors did, was not achieved until November 2003. The Iraqi Governing Council (IGC)—the provisional government of Iraq—established the Higher National De-Ba’thification Commission.

\[^{10} See Appendix B.\]
The IGC appointed Ahmad Chalabi, a Shi‘i G-7 member\textsuperscript{11} and an ardent proponent of de-Ba‘thification, as the chairman of the commission (Stover et al. 2005, 847). Chalabi replaced the appeals process under the occupying authority’s Armed Forces Commander by the new one that was ratified by CPA Memorandum # 7 and with this new appeals process, the HNDBC prevented individuals, who had the `udhu shu`ba rank or above, from appealing their dismissal (Stover et al. 2005, 847). Also, the individuals who still had a right to appeal were given the uninviting choice of “receiving their pensions if they accepted their dismissal notice or forgoing their pensions if they appealed” (Stover et al. 2005, 847).

Although in March 2004, Bremer ordered Chalabi to hold back de-Ba‘thification process, it was too late. Approximately 150,000 senior civil servants, teachers, lecturers, health professionals and managers, who had Sunni Arab backgrounds, were purged due to Ba‘thist membership in 2003 (Cogan 2008). The marginalization of the Ba‘thists resulted in thousands of former high-level officials overtly supporting the insurgency against the U.S. occupation (Al-Marashi and Keskin 2008; Cogan 2008; Shakir et al. 2008). In addition to the formal de-Ba‘thification process, there was an informal de-Ba‘thification, which extended the scope of purges. Hence, Chalabi’s aggressive measures had already begun damaging the Iraqi society.

After the allegations that Chalabi had given flawed intelligence to the US and had leaked U.S. secrets to Iran, he was temporarily excluded from the de-Ba‘thification process.

\textsuperscript{11} Seven Iraqi representatives whom Bremer met regularly.
process in August 2004. His exclusion opened the way for the interim government of Ayad Allawi to reverse the barriers against former members of the Ba’th Party (Cogan 2008). In late 2004, Ayad Allawi called for the disbanding of the de-Ba’thification commission, because de-Ba’thification was hindering national unity (Stover et al. 2005, 850). Bremer withdrew the authority he had given to the HNDBC and allowed the new government to establish a new body in its place (Stover et al. 2005, 850). After the 2005 elections, Allawi lost his power and the process of reintegrating Sunnis into the government was brought to an end. The political conflict between ethnic groups was escalated. De-Ba’thification was the campaign catchphrase of the Supreme Council for the Islamic Revolution in Iraq (SCIRI) and al-Da’wa parties during 2005 elections. After these Shi’i Islamist parties won the elections, the government under the leadership of Ibrahim Al-Ja’fari started implementing de-Ba’thification harshly. The process quickly became de-Sunnification rather than de-Ba’thification.

Later on, the succeeding Prime Minister Nouri al-Maliki acknowledged that “one of the primary obstacles to reconciliation was the de-Ba’thification … and that since it was enshrined in the constitution, the Iraqi parliament, the Council of Representatives would seek to revise the law to allow former Ba’thists to ‘join the political process’” (Al-Marashi and Keskin 2008, 253). Even though under this “national reconciliation” program Al-Maliki aimed to change the de-Ba’thification law, his initiative continued to alienate Sunnis (Al-Marashi and Keskin 2008, 256).

On the one side were some who argued that de-Ba’thification was needed “to break the emotional wall of fear and passivity that has imprisoned most Iraqis for
decades” (Hoagland 2003). On the other side were some who explained that de-Ba’thification was unnecessary and it was “the original sin that led to Iraq's current turmoil” (Struck 2005). As a result of this struggle of the proponents and opponents of de-Ba’thification, on January 12, 2008, the Iraqi parliament passed the “Law of the Supreme National Commission for Accountability and Justice.” The new law did not bring any major change. It in fact broadened the reach of de-Ba’thification and upheld the structure of the HNDBC under a new name Accountability and Justice Commission (AJC). Before March 7, 2010 parliamentary elections, the Independent High Electoral Commission (IHEC) received a list of candidates with possible Ba’th connections from AJC and almost 511 candidates were disqualified because of alleged ties to the party. As Kanan Makiya, the intellectual figure behind de-Ba’thification, explains, “many of the senior politicians did not say anything about this decision because they did not want to be seen as being soft on Ba’thists during the election campaign” (interview with Kanan Makiya October 27, 2010).

1.4 Structure of the Dissertation

The dissertation chapters proceed as follows. In Chapter 2 (Literature Review and Theoretical Framework), I synthesize the existing frameworks of lustration, after I discuss the origins of lustration and its recent meaning. This chapter also clarifies why purge is a better word to describe the de-Ba’thification process than lustration and vetting. It proceeds with the examination of three major aspects of the literature on vetting/lustration/purging: rationale, design and implementation. Presenting these various set of literatures is necessary to place the subject matter in a context and explain the
theoretical framework of this study. Chapter 3 (Methodology) moves through an explanation of my research methods and data collection. This chapter specifically gives information regarding case selection, data gathering methods (interviews and archival research), and data analysis processes. Furthermore, in this chapter, I elucidate my observations that I documented after every interview and gathering I attended to collect data.

Chapter 4 (Rationales for Engaging in De-Ba’thification) and 5 (The Design and Implementation of De-Ba’thification) are the analysis chapters where the findings of this dissertation are presented. Each analysis chapter starts with the presentation of the necessary literature for the purposes of explaining where the analysis fits with in the existing literature, what gaps it fills within that literature, and what contributions it makes. Chapter 4 goes through the detailed examination of Ba’thification in Iraq and explains the origins of the de-Ba’thification process. Furthermore, it explores different rationales presented by interested parties and how these rationales are interpreted by Iraqis. Chapter 5 illuminates the design and implementation of de-Ba’thification and analyzes if and how the rationales presented in Chapter 4 were or were not reflected in the design and implementation of de-Ba’thification.

Finally, Chapter 6 (Conclusion) sums up the main arguments and presents final conclusions for this dissertation. It also includes ideas for future research. This chapter concludes by presenting ideas for similar efforts following the recent developments in the Middle East and North Africa (MENA), such as the prospects of de-Ba’thification in Syria.
CHAPTER 2

Literature Review and Theoretical Framework

2.1 Introduction

This dissertation aims to present the rationales given by both U.S. and Iraqi officials for adopting de-Ba’thification. It also aims to analyze the degrees to which the rationales for de-Ba’thification were (or were not) incorporated into both the design and the implementation of de-Ba’thification policies. As noted in Chapter 1, lustration, purge, or vetting was used in post-World War II and post-communist Europe, and even today in Iraq, but it has been the least studied transitional justice mechanism of all. Yet, there is a significant amount of literature that is critical for this research.

In order to establish a theoretical as well as informational foundation to help shape this study, I will describe several debates in the field of transitional justice and lustration. This chapter will clarify the different terms used to explain the activities of vetting, purging and lustration. One contribution of this dissertation is to prompt this delayed discussion on terminological uncertainty. Coping with this confusion will help to clarify the proper terminology used to describe the de-Ba’thification process and how it should be examined.

Further, I will discuss the theoretical frameworks of transitional justice and lustration to understand how countries come to terms with their past. This set of literature is relevant to my dissertation because gaining an understanding of the reasons for utilizing lustration tells a lot about how the engineers of de-Ba’thification decided on
having such a process and also how they rationalized it. I will also define and describe several debates surrounding the rationale, design and implementation of disqualification efforts. My dissertation adds to these works by discussing the role of the occupier in the design and implementation of disqualification initiatives. The existing literature and my own experiences while conducting this research helped me to construct the conceptual content of this dissertation and this chapter aims to present that theoretical framework.

Overall, this dissertation aims to contribute to existing literature in the following ways. For transitional justice in Iraq, this research provides new observations and details of the de-Ba’thification process. It analytically investigates the aims and the process in order to present accurate assessments about implementation and outcomes of de-Ba’thification. For transitional justice literature in general, this study adds a new case study to the literature and offers important assessments regarding the role of occupying forces in deciding on and implementing transitional justice policies. It also brings attention to understanding all the rationales that are presented by interested parties and the importance of incorporating these rationales into not only the design but also the implementation of transitional justice efforts in order to satisfy the needs of post-conflict societies.

2.2 Terminology

Lustration, vetting, purging, banning, screening, and administrative justice are often used interchangeably in the transitional justice literature. There is no general consensus among scholars how to differentiate these concepts. Terms such as de-Nazification, de-juntification, de-Communization, and recently de-Ba’thification are used
to refer to specific transition periods and practices. These terms appear to be used broadly
without further explanation as to the true meaning of purging, vetting, and lustration. In
this section, I present the historical meaning of lustration because it is not a well-known
term in the English language. I will also explain contemporary understandings and
terminological discussions of purging, vetting, and lustration, along with my
idiosyncratic definitions of each practice, and how de-Ba’thification fits into this
terminological debate.

2.2.1 The Origins of Lustration

Those who use the term lustration to describe the process of screening groups of
people for previous acts of collaboration under the previous regime, and even the
disqualification of them, would likely agree with me that “lustration” sounds much better
than any other term that could be used to explain the same activity. Almost every English
language speaker knows and uses the terms screening, vetting, purging, or banning, but
does not use the term lustration. As Roman David argues, lustration was barely used in
[hits] for the English word lustration. In May 2009, there were …144,000 [hits] for
lustration at Google.com” (David 2011, 68). Despite the increasing use of the word, it
still needs an explanation.

Lustration has a peculiar etymology and history that other words do not. The
etymological roots of lustration lie in the Latin word lustratio (n.) and lustrare (v.)
meaning, “purification by sacrifice” (Cepl 1992, 24; Cameron 2011, 286; Britannica
online). The broad definition of lustration is “any of various processes in ancient Greece
and Rome whereby individuals or communities rid themselves of ceremonial impurity (e.g., bloodguilt, pollution incurred by contact with childbirth or with a corpse) or simply of the profane or ordinary state, which made it dangerous to come into contact with sacred rites or objects” (Britannica online).

In ancient Greece, it was believed that man must voluntarily purify himself from guilt before he enters into a spiritual relationship with God and also associates with other men (1911 Encyclopedia). A purification ritual had a dual meaning: separating the disgraced from communal life and integrating individuals into the group (David 2011, 52; Parker 1983, 19-23). Sometimes cities and states underwent purification to expiate crimes committed by a member or members of the community as in the example of purification of Athens, performed by Epimenides of Crete after the Cylonian massacre (Schmitz 1875).

Unlike the Greeks, the Romans performed lustration on many occasions so that lustration became a regular activity (Schmitz 1875). For instance, all Roman troops were lustrated before they took to the field for battle (Schmitz 1875) and after they returned as well in order to cleanse themselves from the sins of wartime (Stinchcombe 1995, 246; Rigby 2001, 101-2). The city of Rome always underwent a lustration when there were disasters such as civil bloodshed (Schmitz 1875). Besides, a general lustration took place after every lustrum (census performed every five years to cleanse the state) or every year in February (Schmitz 1875; Lendering, n.d). The censors—the entrusted officials responsible for the census—listed and classified the members of the society and determined who is included and excluded from the society with the purpose of
controlling public morals (David 2011, 68-9).

The methods used for lustration both in ancient Greece and Rome varied and included: sprinkling with or washing in water; rubbing with various substances, such as blood, clay, sand, or salt; complicated ceremonies to be cleaned of sin. These ceremonies were performed with fire, air, earth, sulfur, or a branch from a sacred tree; mainly the laurel (Britannica online). Animals such as pig, sheep, ox, ram, and bull were sacrificed for the purposes of purification.

Lustration rituals can also be found in many religions. Christian Baptism with holy water, Jewish lustration with the water of niddah, Islamic purification of ghusl (with water) or tayammum (with soil such as sand, dust or clean rock), and the purification by water in Hinduism and Buddhism are some of the examples of cleaning before praying in general or cleansing from defecation, sexual intercourse, menstruation or sins. Many anthropologists and psychologists have also studied the dual meaning of purification, as Roman David investigates (2011, 52-3). Some of the examples are spring cleaning — getting rid of dust as well as making a house a home through this renewal rite—(Douglas 1966-2003 in David 2011, 52), and hand washing or other daily hygiene routines. These chores enable the washing away of sins and establishing a link between physical and moral purity (Zhong and Liljenquist 2006 in David 2011, 53).

2.2.2 Contemporary Meanings and De-Ba`thification

Lustration rituals today refer to vetting and/or barring sinful individuals from public office with the purpose of cleansing the new democratic institutions rather than cleansing people from their sins (Rigby 2001, 101-2; Boed 2002, 345). Although the
ancient lustration rituals aimed to restore the health of the political system and to protect it from moral dangers such as corruption, greed, cruelty and many other social ills, lustration was thought of as a religious practice more so than a political or a judicial one (Agbese 2004, 130). Today, lustration serves as a political tool that is often used by post-conflict countries in order to address human rights abuses of the previous regime and to protect the new regime from the ills of the previous system.

Understood in this way, the term itself was first used by Slavophone activists in Czechoslovakia after the fall of the communist regime (Williams et al. 2005, 40 n8). The term *lustrace* (lustration in Czech language) referred to the checking or searching for the name of an occupant or candidate of a public post in an inventory, registry, or database and ascertaining if he or she was a Communist party apparatchik (Williams et al. 2005, 40 n8; David 2003, 387-8; Closa Montero 2010, 207). After Czechoslovakia, many other CEE countries including Poland, East Germany, Hungary, Albania, Romania, Bulgaria, Latvia, Lithuania, and Estonia all endorsed some form of lustration, which attached the word and the mechanism to post-communist transitions of the CEE (Bertschi 1995; Cohen 1995; Boed 2002; Kunicova & Nalepa 2006).

These lustration programs inspired many other countries outside the CEE, but the term itself was rarely used outside the post-communist CEE context. For instance, even though many participants of the Future of Iraq Study (FoIS) mentioned that they studied and were inspired by lustration programs in CEE, the CPA did not use the term lustration in the official document of de-Ba’thification.

Some scholars define lustration as an act or composition of acts of systematically
opening archives (Patterson 2011). Lustration is also referred to as the act of screening groups of people for previous acts of collaboration, including being in a leadership or membership status in the Communist party, working as an informer or an agent of the secret service (Rosenberg 1995; Łoś 1995; Siklova 1999; Teitel 2000; Letki 2002; Horne and Levi 2004; Kaminski and Nalepa 2004 and 2006; Appel 2005; Sadurski 2005; Williams et al. 2005; Meierhenrich 2006; Czarnota 2009; Nalepa 2009; Patterson 2011), publicly revealing the names of the collaborators (Boed 2002; Czarnota 2009; Nalepa 2009; Ratner et al. 2009), and even disqualifying or banning collaborators from holding public office (Offe 1993; Huyse 1995; Bertschi 1995; Teitel 2000; Boed 2002; Appel 2005; Meierhenrich 2006; Czarnota 2009; Nalepa 2009).

There is still no consensus in the literature whether lustration is a punitive act or not. On one hand, Karstedt argues that other than the process of screening, lustration consists of “criminal proceedings against elites and authorities over the lower ranks of the state bureaucracy” (1998, 16). Similarly, Blankenburg defines lustration as “putting on trial those who were responsible for the old regime” (1995, 224). Since the targets of lustration procedures may lose their jobs, become ineligible for future employment, and even be stigmatized, one can count it as a punitive measure (Boed 2002, 350-351; de Greiff 2007, 525). On the other hand, some argue that it should not be categorized under criminal punishment (Weigel 1992, 35; Kritz 1994; Letki 2002; Ratner et al. 2009, 287). For instance, Huyse explains lustration or disqualification as “a way to side-step criminal prosecution” (1995, 52). It can therefore be defined as a moral punishment (Cepl and Gillis 1999; Kaminski and Nalepa 2004; Horne 2009a &2011; Stan 2012), civil and
political sanction (Nanda 1998), or just an administrative measure (Teitel 2000, 149-189; Boed 2002, 350).

Another grey area is whether de-Communization and lustration can be used interchangeably. Czarnota claims that by lustration, people refer to: screening collaborators, making their names public, and the efforts of de-Communization (2009, 311). Since lustration programs were often implemented as wholesale removals without considering individual responsibility in some countries under the program of de-Communization, the border between lustration and de-Communization was blurred.

However, those who aim to explain the difference between these two programs argue that de-Communization “refers to all political and legal strategies aimed at eradicating the legacies of communism in the social and political system” (Czarnota 2007, 224-225). This includes the “the exclusion of certain defined categories of ex-Communist officials from the right to run for, and occupy, certain public positions in the new system” (Sadurski 2005, 225). De-Communization encompasses screening, exposing individual guilt of the past collaborator, legally banning communist parties and eliminating their symbols, confiscation of property of communist parties, and removing people from public office for having been functionaries of the Communist party and its related institutions (Bertschi 1995; Borza 2000; Kaminski and Nalepa 2004; Williams et al. 2005; Czarnota 2007; Closa Montero 2010). Lustration is a part of this broad effort (Czarnota 2007, 224-225; Priban 2007, 317).

Moreover, lustration and purging are often lumped together because the lustration programs in some of the post-Communist European countries were implemented
extensively without considering the individual responsibility or like purges. Timothy Garton Ash views lustration as a purging process and derides, “there is probably no such thing as a good purge, even if it is politely called lustration” (2001, 276). Yet in some contexts, the opponents of lustration programs associate lustration with purges and accuse the new elite of creating new injustices by using the old methods of exclusion (David 2011, 69).

I claim that how lustration was implemented in one country drastically differs from how it was implemented in another one. It is very important to acknowledge that lustration processes often encompass the principles of purging, which depend not only on which post-communist European country it was applied to, but also who designed and implemented the processes, the timing of the process, and the criteria that were used for exclusions. Even though some lustration programs were either implemented as purges or purges were “politely called lustration,” I argue that there are significant differences between these concepts. For instance, many scholars who say they use these concepts interchangeably tend to use the word “lustration” only in post-Communist Europe and the word “purge” in a post-1945 European context (Amstutz 2005; Closa Montero 2010). Yet, there is no significant effort to clarify the meaning of each practice and their differences.

One exception is Lavinia Stan, who highlighted some of the differences between these two practices in her blog (2010). She argues that purges (referring to de-Nazification efforts and de-Ba’thification) leave the countries less democratic, weaken the rule of law, end up with extensive job losses, and do not provide due process rights
(Stan 2010). She also explains that purges are usually implemented through executive decrees or occupying forces and they usually affect those who are in the top-levels of the leadership (Stan 2010).

However, she describes lustration as a more democratic process than purges because they are enacted by parliamentary laws and they affect not only the most responsible, but also everybody who is involved in the crimes of the Communist party (Stan 2010). She claims that lustration programs do not obstruct democratization, do not always result in job losses, and give *lustrati*\(^{12}\) a chance to appeal lustration verdicts in the national courts (Stan 2010). Finally, she claims that purges are transitional mechanisms therefore they are temporary; lustration programs are not so they can be lengthy (Stan 2010).

Stan’s attempt to present these differences is valuable, yet in reality some of these differences are incorrect. I suggest that making any argument that lustration or purge are part of democratization is problematic. According to Stan (2010), purges cannot have democracy as their declared goal. However, one of the most mentioned and cited rationales of de-Ba`thification was establishing democracy through cleansing the seats of power of Ba`thists. The detailed account of this rationale can be found in Chapter 4. I agree with her regarding the job losses, but it is worth to note that the sanctions of both purges and lustration can vary depending on how each practice is implemented. The implementation of each mechanism also determines the right to due process. Not all

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\(^{12}\) *Lustrati* means an individual who is affected by the lustration process.
purges in CEE disregarded the right to appeal even though it was not implemented as rigorously as in lustration programs. Lastly, making a claim regarding the duration of lustration and purge is invalid. The lustration program that has the extensive implementation was in Czechoslovakia, and it lasted for 5 years. However, de-Ba’thification is still in effect after 10 years. Therefore, purges similar to lustration programs might be utilized to cleanse the system from not only the current but also the future functionaries of the previous regime, especially when purges are vastly politicized.

Vetting is another concept that is extensively used in the literature to describe processes similar to lustration. According to “The Vetting Public Employees in Post-conflict Settings: Operational Guidelines” (hereinafter referred to as Vetting Guidelines or VG) of the United Nations Development Programme (UNDP) that was developed by Alexander Mayer-Rieckh, the head of the ICTJ’s Security Sector Reform Program, vetting refers to processes for assessing an individual’s integrity in order to determine suitability for public employment. In this definition, integrity refers to “a person’s adherence to relevant standards of human rights and professional conduct, including her or his financial propriety,” (VG 2006, 9), which is more than just being an informer or an agent of a secret service or a party.

I claim that vetting is a form of institutional reform that can be used in and outside the transitional justice context. In a transitional justice context, I define vetting as the screening of current employees or new applicants in order to eliminate the influence of those who were involved in any sort of human rights abuses from civil service. During this process, individuals can also be vetted based on their capacity (citizenship, minimum
age, educational standards, professional qualifications, competence, experience, physical and mental aptitude) and representation (gender, ethnicity, religion, geographic origin and former warring faction) (VG 2006, 20). Similarly, outside the transitional justice context, when applying for a job, employers in both public and private institutions can vet each applicant. This vetting process can be based on the applicants’ capacity and representation, especially if there is a requirement to comply with affirmative action. They also look for prior convictions or jail time.

The difference between vetting and lustration is not as clear as the difference between lustration and purging. Lustration can be categorized under vetting, despite the fact that some lustration programs were not based on individual responsibility and unjustly punished individuals on the basis of association rather than guilt. It is explained in the vetting case-study book titled, “Justice as Prevention: Vetting Public Employees in Transitional Societies,” that lustration only refers to the laws and processes that were named as such in the former communist countries of CEE (Duthie 2007, 18). When it comes to examining similar mechanism implemented outside the CEE, such as Bosnia and Herzegovina, Liberia, and Greece, the term vetting was used. Table 2.1 shows some of the differences in terminological meaning that my research aims to contribute in order to clear up the confusion that currently plagues the field.

In the same book, Roger Duthie argues that de-Nazification in Germany, actions taken against the collaborators of the Vichy regime in France, and recently de-Ba’thification in Iraq are purges that “target people for their membership in or affiliation with a group rather than their individual responsibility for the violation of human rights”
(2007, 18). Procedural guarantees—conformity to international human rights standards—distinguish vetting processes that are based on assessments of individual conduct from purges that exclude individuals solely on the basis of group affiliation and therefore violate international standards (VG 2006, 22).
Table 2.1. Disqualification Efforts.

<table>
<thead>
<tr>
<th></th>
<th>Vetting*</th>
<th>Lustration**</th>
<th>Purge***</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Definition</strong></td>
<td>Assessing an individual’s integrity in order to determine suitability for public employment.</td>
<td>Controlling the participation of former Communists in the new public sector through screening and banning.</td>
<td>Eliminating the influence of the previous regime functionaries from the new system (banning the parties, disqualifying its top leadership, and eliminating their symbols and influence in public sphere) without considering individual responsibility.</td>
</tr>
<tr>
<td><strong>Enacted by</strong></td>
<td>Parliamentary laws, internal disciplinary mechanisms, Executive decrees</td>
<td>Parliamentary laws (e.g. Lustration law in Czechoslovakia was passed and implemented by its first democratically elected parliament in 1991.)</td>
<td>Executive decree or occupying forces (e.g., De-Nazification program in post-WWII Germany was initiated by the Allied Forces in 1946.)</td>
</tr>
<tr>
<td><strong>Implemented by</strong></td>
<td>Ad-hoc commissions</td>
<td>Governments or government-affiliated organizations/commissions (e.g., Minister of Interior was responsible for implementing lustration in Czechoslovakia.)</td>
<td>Occupying forces and/or governments recently returned from exile (resistance) (e.g., Norway’s ordinances dealing with collaboration was implemented by the special committee that was initiated by the resistance movement. De-Ba’thification was implemented first by the occupied forces (CPA) and then by the provisional government (IGC))</td>
</tr>
<tr>
<td><strong>Target population</strong></td>
<td>Mainly those who lack integrity. (Individuals can also be vetted based on their capacity and representation)</td>
<td>All members of the Communist party. (e.g., In Czechoslovakia, individuals who hold or apply for public sector posts had to apply for a lustration certificate at the Security Office of the Ministry of Interior.)</td>
<td>Top leaders (of the party and of the public institutions) and necessary institutions. (e.g., Members of top four echelons of Ba’t party, dissolution of army and many other related institutions in Iraq.)</td>
</tr>
</tbody>
</table>

*Vetting- Ideal Disqualification process  
**Lustration-Unique to post-Communist Europe  
***Purge-Some examples are de-Nazification, de-Ba’thification

Purges enact collective punishment. As such, they cannot hold guilty individuals accountable for specific abuses if those guilty individuals are not members of the group targeted for collective punishment by a purge. Purging cannot be accepted as an ideal
transitional justice mechanism since it is the wholesale removal of groups of people from
the system regardless of guilt or innocence. However, there is always a risk that a vetting
process will be implemented as a purge. Given that, using these terms interchangeably
can be misleading.

After examining the contemporary use of lustration, and how different scholars
load similar and sometimes different meanings on to lustration, purging, and vetting, it is
important to also understand how de-Ba’thification will be discussed in my research. The
abovementioned points bring me to these conclusions. First, de-Ba’thification cannot be
named as lustration even though the designers and the implementers of de-Ba’thification
admit that they were inspired by lustration processes. Second, vetting is not an
appropriate term to describe de-Ba’thification because individual responsibility was
vastly ignored both in the design and implementation of the process. Third, as explained
in Table 2.1, I argue that de-Ba’thification program resembled purging more than any
other process, despite its negative connotation. De-Ba’thification was imposed by
occupying forces and implemented by occupying forces and the provisional government.
It aimed to affect the top-level party officials, despite the fact that it did not affect all of
the top-level Ba’thists and spread to the lower-level party officials.

Thus, I will use purging to describe the de-Ba’thification process. It is also
necessary to note that while citing other studies in the field, I will use only the term the
authors choose to use to prevent any misinterpretation and confusion. Because lustration,
purging, and vetting are often used interchangeably, the literature on any of these
practices is necessary for my study.
2.3 Understanding how countries deal with the past

One of the most intriguing questions in the literature of transitional justice has been how post-conflict countries face their past, specifically, why they prefer some transitional justice mechanisms over others. In this section, I survey some of the theoretical arguments that explain the key determinants of choices of transitional justice mechanisms in general. Thereafter, I present the existing frameworks that focus on lustration in particular because there isn’t a purging literature. Gaining an understanding of why countries choose lustration or similar practices over others helps to uncover their justifications for implementation.

2.3.1 Transitional justice in general

One of the earlier attempts to explain the factors that bring about transitional justice is Huntington’s well-known work titled, “The Third Wave: Democratization in the Late Twentieth Century.” According to Huntington (1991), how each country deals with its “torturer problem” can be predicted by investigating its “transition type” or, in other words, “the mode of exit.” He presents four types of transitions from authoritarian to democratic regimes in the post-1974 era. Transformation is a type of transition that is initiated by the elites within the regime. The elite retains its power while transforming

Transition type variable is sometimes referred as “balance of forces” in the literature. De Brito et al. (2001, 305) argue that the “balance of forces” variable is more flexible and dynamic than transition type because it permits variation over time, while the transition type concept refers to a fixed historical period. Since the balance of power can shift in the period of transition, the “balance of forces” concept explains the post-conflict reality.
their political beliefs (e.g., Hungary 1990, Bulgaria 1990, Spain 1978 and Brazil 1979). Therefore, dealing with past injustices is not as crucial as compared to other modes of transition. *Replacement* occurs when the regime is overthrown by the opposition (e.g., East Germany 1990, Romania 1990, Argentina 1983, and Greece 1975). This type of transition is likely to end up with retributive transitional justice mechanisms such as prosecutions. *Transplacement* is a process that is observed where neither the regime nor the opposition is powerful enough to change the system and so they negotiate for a change (e.g., Czechoslovakia 1989, Poland 1989, South Korea 1987, and Uruguay 1984). In this transition type, justice demands are likely to be moderate and reconciliatory. Lastly, *Intervention* happens when the democratic government is established by an outside power as in the examples of Grenada and Panama. Unfortunately, Huntington does not explain the relationship between interventions and what he calls the torturer problem.

Some scholars endorse Huntington’s typology. For instance, Huyse claims that the transitional justice choice is related to the conditions of a regime’s transition to democracy (1995, 77-78). Similarly, Posner and Vermeule argue that “…transitional justice increases as the influence of the [old] elite decreases. One possible explanation for this pattern is that when [old] elites lead the transition, they try to shield themselves from post-transitional punishments, and when they bargain for the transition, they try to extract concessions from opposition” (2004, 770). De Brito et al. also maintain that the balance of power determines even which specific transitional justice mechanisms should be used; thus, “[t]he more unfavorable the balance of power for the elite of the old regime, the
more probable that the trials and administrative purges will be arbitrary…the more balanced the balance of forces, the more probable that the rule of law will be strictly observed” (2001, 305-306).

Other than transition type, there are many factors that are utilized to explain the choice of transitional justice mechanisms, such as authoritarian regime duration, the degree of repression used, transition timing, and the leadership of the old regime. Some argue that regime duration is influential for the choices of transitional justice, “the more prolonged and institutionalized a dictatorship, the more difficult a new democracy will find it to carry out truth and justice policies, because they would stigmatize socials groups and institutions that supported the dictatorship” (De Brito et al. 2001, 309). Another argument is that the new regimes prefer harsher transitional justice mechanisms. This is true if the previous regime committed high levels of repression, as in the example of post-Nazi Germany (Huyse 1995; Nino 1996; Elster 2004; Posner and Vermeule 2004). De Brito et al. take the repression variable one step further and argue that when the magnitude of repression is greater and the methods used for repression are intensive and clandestine, the need for transitional justice mechanisms will be greater (2001, 309-310). Also when the repression is based on extensive social complicity, the implementation of transitional justice will be very much more complex. The timing of a transition is also important for the implementation of transitional justice in the post-conflict environment. Nalepa claims that “where crimes were committed long ago, one would expect the demand for transitional justice to be lower than where they were committed recently” (2010, 23). The leadership of the old regime also matters as the
results of Olsen et al.’s study indicate. According to Olsen et al., the authoritarian regimes ruled by a dictator are more likely to prefer trials over lustrations compared to regimes led by single party or military rule (2010, 54).

Another set of arguments that transitional justice scholars use to explain the choices for transitional justice are the nature of the ideological preferences and commitment of the new elites, their human rights background, and the country’s past experience with democracy. New elites are expected to pursue transitional justice if they respect human rights (Nino 1996; De Brito et al. 2001). According to Grodsky (2011), the pursuit of transitional justice is a part of a broad political framework. Therefore, “elites construct policy based on their internal calculation of what they need to provide citizens to be re-elected; what they themselves prefer in terms of (justice) policy; and how their (justice) policies might be perceived by constituents to affect delivery of the first” (Grodsky 2011, 28). Other than the attitudes of new elites, domestic social groups, civil society and human rights organizations, public opinion, international organizations, and many other groups can pressure for transitional justice (Grodsky 2011; De Brito et al. 2001). In addition to the preferences of new elites and both domestic and international pressure, the country’s historical acquaintance with democracy can be a relevant factor for the pursuit of transitional justice. If the political culture is one of respect for the rule of law, and the past experience with democracy is strong, the demands for truth and justice policies will be higher (De Brito et al. 2001, 311).

Moreover, other scholars bring attention to the role of the economy and its relationship with the choice of transitional justice mechanisms. Jon Elster claims that
transitional justice can be waived aside in the immediate aftermath of transition because of the urgent necessities to meet basic needs (2004, 213). Paying attention to forward-looking tasks, such as economic transformation and reconstruction, may take precedence over tasks that are perceived to be backward tasks, like the one of transitional justice (Elster 2004; Posner and Vermeule 2004). Therefore, once the economy gets better, transitional countries might prefer adopting extensive mechanisms to face their pasts (Olsen et al. 2010, 77). In the next section, I survey the frameworks that explain the choice of lustration.

2.3.2 Lustration in particular

Much of the literature on transitional justice in post-Communist countries focuses on explaining why some of the post-Communist states confronted the past with different lustration programs, even though they experienced similar repressive regimes. The existing frameworks examined the conditions under the previous regime (mainly referred as “weight of the past”) and/or under the new regime (mainly referred as “politics of the present”) in order to be able explain different lustration demands.

The developments in the CEE following the publication of Huntington’s seminal book prompted many scholars to question his theory. In his 1994 article, John P. Moran criticizes Huntington’s work for presenting a causal link between the democratization process and the outcome of the torturer problem in the CEE context. He applies a theoretical framework based on psychological factors that he argues are a better fit to CEE transitions. He bases the psychological factors of “voice” and “exit” on Albert O. Hirschman’s theory of “Exit, Voice, and Loyalty.” In his framework, “voice” represents
the choice of political dissent under the communist regime and “exit” represents the choice to leave from the nation or system. Moran theorizes that, “…in the newly democratized countries of CEE the tendency to forgive and forget can be found in those countries—Poland, Hungary, and the GDR—where either exit and/or voice were allowed under the old regime. In countries where neither exit nor voice were allowed—Bulgaria, Czechoslovakia—calls for punishment eventually predominated” (1994, 101). Given this, “the outcome of the ‘torturer problem’ can be looked upon as a pressure cooker, where exit and voice provide for a pressure release. Where the release is not allowed, the former torturers face explosive situations in the post-transition period” (Moran 1994, 101).

Moran, together with Eva Jaskovska, revisited his theory in 2006. After examining the work of other scholars since 1994, they decided to add three countries to Moran’s framework (Estonia, Latvia and Lithuania) and three additional escape valves to the pressure cooker (the level of political legitimacy of the previous communist regime, the possible use of nationalism as an ideological replacement for communism as the dominant form of political legitimacy in the post-communist period, and the existence or disappearance of the torturers themselves) (Jaskovska and Moran 2006, 500). They observed that the existence of a large Communist party can lead to retribution, but if one of these newly added valves did not operate to relieve the pressure, the country would arrive at the point which prosecutions would be realized (Jaskovska and Moran 2006, 500-501).

Building on Huntington and Moran, Helga A. Welsh (1996) argues that the choice of lustration can be predicted by the factors related not only to “weight of the past” but
also to the “politics of present.” The crucial point to her argument is that if the former Communists or their successor parties lose the first free elections or they have weak electoral strength, it is easier to move ahead with de-Communization efforts (Welsh 1996, 422). She also claims that as time passes the question of how to deal with the former communists and state security agents will continue to resurface, and it will be used, and even exploited, as a tool in the struggle for political power (Welsh 1996, 425). Similarly, Szczerbiak (2002) hypothesizes that lustration in post-Communist Poland was influenced by the “politics of present.” In their comparative analysis of Czech Republic, Hungary and Poland, Williams et al. argue “the passage of lustration bill depended on the ability of its most ardent advocates to persuade a heterogeneous plurality of legislators” (2005, 22). They emphasize the importance of the “politics of present” even more than Welsh. They identify five sources of the demand for legislation (specific security service related incidents, disillusionment with broader post-Communist outcomes among some elites, the political needs of the post-Communist right, the impact of earlier lustration efforts, or a public demand for information) (Williams et al. 2005, 34). None of these factors are related to the “weight of past” such as the nature of the Communist regime or the mode of exit. Hence, in this model, lustration is an outcome of post-Communist political competition and legislative coalition building.

The following year, Nadya Nedelsky (2004) compares the Czech Republic and Slovakia to question why these two countries, despite having shared a communist regime and a revolution against it, have followed different paths of lustration. She maintains that both the politics of the present and the weight of the past are connected; therefore, the
previous regime’s legitimacy, both in the communist and post-communist rule, is the most important factor shaping the new regime’s response to its past (Nedelsky 2004, 107-108). Given that, she notes, “the higher a society’s view of the previous regime’s legitimacy, the lower its motivation to pursue justice for its authorities and the higher the likelihood, in a democratic context, that it will allow elites associated with the former regime to return to the political stage. These elites, in turn, would not be particularly likely to support vigorous transitional justice” (Nedelsky 2004, 88). Along the same lines, Lavinia Stan (2009) argues that former communists in CEE voted against the lustration bills and the file access laws while the anti-communists provided full support for them. She explains that this struggle was influenced by the composition and strength of the opposition before and after the regime change, the communist regime’s use of repression and the country’s experience with political pluralism before communism (Stan 2009, 268). She concludes that transitional justice has been harsher in the Czech Republic, East Germany and the Baltic states, where communist rule was enforced through repression and ideological rigidity, than in Hungary and Poland, where some level of reform was allowed (Stan 2009, 268).

Moreover, in 2010 Monika Nalepa uses game theory to explain puzzling questions about why in some countries such as Poland and Hungary communist-controlled parliamentary majorities endorsed lustration policies, and why the opposition refrained from immediate lustration in so many other CEE countries. First, the communists utilized lustration bills to preempt harsher legislation favored by hard-line anti-communists. Her premises clearly contradict Noel Calhoun (2002, 497) who argues
that the debates surrounding lustration have been framed by the ideology of liberal democracy and, therefore, post-communist states resulted in more moderate lustration bills as in the case of Poland. Second, Nalepa notes that lustration exposes not only the faults of former regime collaborators but also those of the former dissidents (2010, 12). Since these dissidents feared the “skeletons in their own closet,” their enthusiasm for lustration diminished.

Roman David provides the most recent framework. He classifies personnel systems or in other words different kinds of lustration programs as follows:

Persons associated with the past regime may be dismissed from their positions; their past may be exposed but they may be allowed to retain their posts; they may be given a second chance to stay in exchange for the confession of their past involvement; and no action may be taken against them, allowing them to continue in their posts without stipulating any other conditions (David 2011, 24).

David argues that there can be two possible dynamics that affect which personnel system a new regime adopts: perception of the tainted and perception by the tainted (2011, 96). Given that, he explains “the stronger the perception of inherited personnel as tainted, the stronger the demand for dismissals and the weaker the demand for an alternative system” (David 2011, 226). Although the outcome of “perception of the tainted” is clear, it is not the case for the “perception by the tainted.” The quantitative data shows that those who are in the gray zone—people who were associated with the former regime, but supported the new regime after the regime change and who seek not to be identified as tainted—may have stronger demands for dismissals; whereas, the qualitative data presents an opposing outcome that people of the gray zone prefer lenient personnel systems in order to escape their own responsibility for the past (David 2011, 227).
Overall, there are several factors presented in the literature that affect the choice of lustration in post-communist countries. Most of these factors are related to the nature of the communist regime in the past and today’s political makeup of the societies. I acknowledge that all these frameworks are important for this dissertation even though they examine the choice of lustration rather than purging. The nature of the Saddam Hussein’s Ba’th regime and the immediate political makeup of Iraq are important elements, but the willingness of the occupying forces to initiate a purging process is an important factor that gives a clue about why de-Ba’thification was preferred over other transitional justice mechanism. In the next section, I will present the rationales that were utilized in order to implement lustration, vetting, and purging processes.

2.4 Rationale(s)

In this section, I will present some of the most cited rationales of lustration, vetting, or purging processes and debates surrounding them. The detailed account of this set of literature and where my analysis fits with the existing literature will be examined in Chapter 4.

Roger Duthie describes the rationale as the reason(s) for adopting a vetting process and the way by which the process is justified (2007, 20). The designers of any vetting program should consider what such a process would provide for the society and the country. They should also find a way to explain and justify these goals to the public. Doing so is crucial for the design and implementation of a vetting process. Politicians tend to justify lustration laws in order to prove to the public that they are seriously dealing with concrete issues (Agbese 2004, 130). Manipulating popular sentiments
through these justifications can be beneficial to fulfill their own political goals. Nevertheless, public support is crucial for lustration to be implemented (Horne and Levi 2004, 59). Politicians should communicate the goals of lustration policies with the public especially if a country is under occupation. Yet, the reasons for vetting cannot always be agreed upon by all and public demands for vetting can be different than official justifications (Duthie 2007, 30).

Although Roger Duthie (2007, 30) observes that justifications can be narrow, broad, long term, short term, numerous, contested, and changing over time, the majority of the literature focuses on one broad rationale: consolidation of democracy. With democracy being the most discussed rationale in the literature, a controversial debate was sparked between supporters and opponents of lustration. Supporters tend to justify lustration bills by emphasizing the positive link between lustration and democracy, whereas opponents accuse supporters of using democracy discourse to justify their personal revenge. According to the opponents, there are five reasons to believe that democracy cannot be consolidated through lustration. These five reasons are: it is based on the presumption of guilt rather than of innocence (Bren 1993, 18; Calhoun 2002, 329; Rigby 2001; Grodsky 2011); it is based on collective guilt rather than individual responsibility (Bren 1993; Cohen 1995; Nanda 1998; Šiklová 1999; Rigby 2001; Calhoun 2002; Boed 2002; Horne and Levi 2004; Sadurski 2005; Amstutz 2005); it tends to undermine the fundamental right to due process as well as other individual liberties inherent in democracy (Offe 1993; Bren 1993; Schwartz 1994; Cohen 1995; Huyse 1995; Stinchcombe 1995; Ellis 1996; Nanda 1998; Teitel 2000; Rigby 2001; Boed 2002; Horne
and Levi 2004; Amstutz 2005; Ratner et al. 2009); it judges individuals’ past activities relying on a single source, namely the secret service files (Cepl 1992; Łoś 1995; Rosenberg 1995; Welsh 1996; Rigby 2001; Kavan 2002; Letki 2002; Kaminski and Nalepa 2004; Appel 2005; Sadurski 2005; Williams et al. 2005; Safjan 2007; David 2011); and its retroactive character undermines the process of democratic consolidation as well as a state’s commitment to the rule of law (Offe 1996; Minow 1998; Rigby 2001; Calhoun 2002; Aukerman 2002; Horne 2009b).

Along the same lines with the democracy rationale, establishing a trustworthy political system is another cited rationale of lustration. Some argue that in the absence of lustration, feelings of cynicism and distrust towards the political system may be generated and the principles of competence, fairness, honesty, accountability, and dedication to the public interest may be compromised. (Weigel 1992, 35; Huyse 1995, 39; Letki 2002, 541; Horne and Levi 2004, 57; Priban 2007, 319; Wilke 2007, 365; Killingsworth 2010, 86; David 2011, 4). Vetting can also contribute to trust-building between individuals who are members of the same political community (de Greiff 2007, 532; Horne 2005, 40–42).

Some of the other rationales for disqualification presented in the literature following single or comparative case studies are establishing historical truth, clarifying issues of moral and political responsibility, ensuring minimal justice, protecting individual rights, and preventing the possible blackmailing against those who allegedly had past association with the security service (See Łos 1995; David 2003; Williams et al. 2005). In this dissertation, I argue that rationales can vary across different interested
parties and change depending on many factors, such as the timing of the process, who implements it, and how or if the rationales are communicated with the public. When occupying forces initiate the process, there can be a lot of interested parties and rationales. This study is based on the fact that justifications for purging are not always accepted by the general public or by specific social groups. This is the case especially when the justifications are not communicated with the public and when the public interest is not incorporated in the design and implementation of the process. The next section presents some of the design and implementation literature that is useful in developing my theoretical framework.

2.5 Design and Implementation

“There is no one-size-fits-all approach to vetting; in each case, the designers of a vetting process must make a number of basic decisions concerning what they want to achieve and how they want to achieve it” (Duthie 2007, 20). In this section, I will elaborate on the literature that focuses on “how they want to achieve it.” The detailed account of design and implementation literature and where my analysis fits with the existing literature will be examined in Chapter 5.

Herman Schwartz (1994), borrowing from the lustration experiences of the CEE, presents a set of principles for lustration. These principles address issues such as the persons who fall within the scope of lustration, what will happen to them, what time period should be lustrated, who should be responsible for implementing lustration, and what are the necessary procedures that lustration process should respect.

Along the same lines, the Vetting Guidelines present some of the critical
decisions and factors—other than the rationale(s)—to be considered by the designers of any vetting process. Some of these decisions include (VG 2006):

- What institution(s), position(s), person(s) are to be vetted,
- which institution(s) (international/ national or both) is responsible for controlling and implementing the vetting,
- what kind of misconduct is being screened for during the vetting process,
- what kind of sanction(s) will be enforced,
- what would happen to those persons who are positively vetted,
- whether there exists necessary resources and authority for implementation,
- whether the timing is right,
- how long the process should take,
- how it should be structured so that it respects international procedural guarantees,
- what type of vetting should be used (review or reappoint).

If these decisions are not taken into consideration, there might be some undesirable consequences of vetting processes. For instance, the process can be easily manipulated and politicized, the extensive loss of manpower can lead to the governance gap, and also the levels of violence and destabilization may increase (VG 2006, 14).

I argue that design decisions that are presented by Schwartz and the Vetting Guidelines are necessary to consider even when the process is initiated by the occupier. Many scholars discussed some of these decisions and undesired consequences of vetting or lustration processes that both Schwartz and Vetting Guidelines present either through thematic investigations or case studies14 (Crossey-Frollick’s 2007, 2010; David 2006; Horne 2009a; Horne and Levi 2004; Kavan 2002; Rosenberg 1995; Šiklová 1999; Teitel 2000; Zolkos 2006). One of the most important studies that were useful in developing a

14 For more information see edited book titled, “Justice as Prevention: Vetting Public Employees in Transitional Societies.”
theoretical framework for my study was Jens Meierhenrich’s lustration theory. This theory is relevant to my dissertation because it includes the role of occupier as an important element of lustration design. Investigating Iraq’s lustration effort, he explains the dynamics of lustration under occupation as follows:

The occupant will seek to remove leading representatives as well as sympathizers of an ousted regime from leading positions in politics and society. The population of the occupied territory, in turn, will fear excesses in the administration of lustration and the loss of public employment. Members of the ousted government, finally, will generally resist the administration of lustration, and seek to regain positions of influence. (Meierhenrich 2006, 104)

In order to prevent this possible escalation of conflict, he argues that there should be three ethical guiding principles of lustration practice for its occupants/designers: prudence, proportionality, and publicity. The principle of prudence means questioning the suitability of lustration as an institution of *jus post bellum* in a given context. Proportionality refers to the importance of balancing the sanctions with the severity of wrongdoing. The publicity principle includes the publication and dissemination of determined lustration guidelines to the population of an occupied territory in advance of war. Meierhenrich (2006) claims that de-Ba’thification failed to fulfill all of these principles and therefore led to instability.

Presented here are some of the broader frameworks regarding the design and implementations that help to shape this study and provide informational and theoretical foundation. It should be noted that the existing literature does a fairly good job in

\[^{15}\text{Meierhenrich defines lustration as “the purification of state institutions from within or without” (2006, 99).}\]
explaining these decisions for various lustration cases. However, my research plans to expand the knowledge on the latest purging effort, de-Ba'thification, through describing and analyzing the rationales, the design and the implementation of the de-Ba'thification policies and procedures.

After surveying the literature and completing my interviews, I theorize that when an occupier initiates the process, there are other issues that need to be considered in order to have a functioning transitional justice initiative. These issues are explained as follows. The occupier should be knowledgeable about ethnic composition and the culture of the society. This information is particularly important for an occupier to understand who were the actual guilty parties and who were not guilty. The occupier should incorporate the needs of all segments of the society into both the design and the implementation in order to justify its policies and respond properly to public demand. Furthermore, the occupier should assume responsibility throughout the entire process. Along with creating an ad hoc commission or a special mechanism that is responsible for the implementation of the process, an impartial and legitimate oversight mechanism should be established as well. An oversight mechanism is crucial even though the process broadly involves domestic actors. In Chapter 5, I will discuss these design and implementation related concerns that are raised under the occupation along with the design decisions presented by Schwartz, Meierhenrich, and the Vetting Guidelines.

2.6 Conclusion

Although purges were common in Germany, France, Norway and many other European countries after World War II, the literature on disqualification efforts in general
evolved only after the consecutive lustration practices in CEE following the fall of the Soviet Union. All of the existing frameworks aim to explain the same demands for lustration in the early 1990s. Further, the existing literature focuses on the dialogue between the opponents and proponents of lustration. Studies on de-Ba’thification are still very limited and a comprehensive study on de-Ba’thification rationales, design, and implementation is still missing, despite the increasing interest in lustrations. Hence, this study aims to fill this gap.

This chapter presents the existing literature on transitional justice and disqualification efforts and where it pertains to my dissertation. Through a comprehensive review of the literature, this chapter also lays a foundation for the coming chapters and defines a place for de-Ba’thification in the literature. Differentiating between lustration, vetting, and purging are critical not only to give meaning to de-Ba’thification as a purging process, but also to clear up the terminological confusion that exists in the literature. It is also important to understand how countries decide on which transitional justice mechanisms to utilize in order to come to terms with the past as well as why they specifically choose lustration processes. This set of literature is relevant but still does not completely shed some light on why and how de-Ba’thification is justified. Moreover, after presenting the literature on the rationales, design elements, and implementation processes, I add to these works by discussing the role of an occupier in purging. This chapter provides the groundwork for the analysis chapters. The contributions of this dissertation to the literature and to theory building are explained in analysis chapters (Chapter 4 and 5) in detail.
CHAPTER 3
Methodology

3.1 Introduction

This research seeks a greater understanding of rationales for de-Ba’thification in Iraq and of the degrees to which these rationales were (or were not) incorporated into the design and the implementation of the de-Ba’thification policies. These goals are best accomplished by utilizing case study methodology and its essential practices as the research framework.

This chapter details the research methodology and case selection. The two main data gathering methods—interviews and archival research—that I employed to conduct my research are also discussed in this chapter. I describe my choice of interviewees and interview sites as well as many ethical and personal decisions I made while conducting this research. Some interviews created a number of challenging situations, such as issues revolving around being a female researcher, dealing with patriarchal mindsets, protecting interviewee confidentiality, and building trust and rapport during phone-interviews. In this chapter, I discuss these challenges and my reflections.

Although direct observation was not one of the principal data collection techniques in this dissertation, I assumed the role of observer in several circumstances. Therefore, I describe my observations and personal reflections. Finally, I conclude this chapter with detailing the process of data analysis.
3.2 **Methodology and Case Selection**

This dissertation draws from an in-depth and holistic case study of de-Ba’thification. Yin defines a case study as, “[a]n empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident” (2003, 13-14). Furthermore, Stake (2008, 134) contends that the common goal of case-based research is to enable the researcher to communicate the experience of actors and stakeholders as well as his/her experience of studying the case. Herein, this single and holistic case study aims to provide a detailed examination of de-Ba’thification by providing the reader with an in-depth understanding of the case, along with examining the rationales across different segments of Iraqi society and the U.S. officialdom. These rationales will then be analyzed to ascertain whether they are reflected in the plan and the execution of the policies.

Identifying the rationales for de-Ba’thification is a challenging process because they can vary across individuals or the institutions they represent. Also, these rationales can be contested and change over time (Duthie 2007, 30). One good way to grasp these numerous and divergent rationales altogether is to talk to people who have been involved in the design and the implementation of the de-Ba’thification, and also talk to people who have been directly or indirectly affected by the de-Ba’thification policies. Through qualitative research these different perspectives can be uncovered. Comparison of the rationales presented by different stakeholders with the actual policy design and implementation is an important contribution of this inquiry. This comparison will shed light on whether the de-Ba’thification process succeeded in fulfilling its goals. What
misconduct to be screened for, what kind of sanctions should be used, how many people and which institution will be purged, which institution or group of people should implement the process and what rights to be given to the purged people are all important decisions that can change based on the rationale(s) of the any vetting process. In order to design and implement a fair and equitable process for all, each rationale has to be incorporated into the design and the implementation. As Duthie (2007, 26) argues a fair and equitable vetting process will be one that is objective. This research, therefore, will describe and analyze many of the issues related to design and implementation by uncovering the rationales for de-Ba’thification for different groups, as well as who has been involved in and/or affected by it.

Selecting good case(s) for in-depth analysis is a challenging process for the researcher (Gerring 2007). However, most case study research is conducted by researchers who have an “intrinsic interest” in the case (Stake 2008, 128). My interests in understanding the implementation of transitional justice mechanisms, specifically lustration and purges, and the Middle East politics coincided with the de-Ba’thification of Iraq. I believe my intrinsic interest in de-Ba’thification draws me toward explaining its unique issues, contexts and interpretations and, most importantly, its “thick description” (Stake 2008, 128).

Another rationale for selecting de-Ba’thification as the unit of analysis for this study is that it is a unique or, in other words, an extreme case (Yin 2003, 39-42). De-Ba’thification is the latest purging effort and, as such, has not been empirically investigated or analyzed to date. Initiated and administered by an occupying power, de-
Ba’thification feeds the insurgency, and it uses party affiliation as the only criteria for screening or removing individuals from the public sphere. Thus, this research aims to examine this unique case in order to find its place in transitional justice, specifically lustration/purge literature.

Yin argues that a single case study does not represent a sample. In a situation such as this, where a single case study is utilized, the goal of the researcher is not to enumerate frequencies (statistical generalization), but to expand and generalize theories (analytical generalization) (2003, 10). Even though these cases do not necessarily represent the complete universe of possible samples, being able to make analytical generalizations requires carefully selected case(s). The aim of this research is not specifically to make generalizations through a representative case, but to analyze it in terms of theoretically relevant variables (George 1979, 51).

3.3 Data Gathering

I utilized two different data collection methods in order to study de-Ba’thification: Interviews and archival research. These data collection methods were chosen mainly because they helped me to learn the different rationales behind the planning and implementation of de-Ba’thification. Interviews helped me to capture individuals’ point of views, and secure rich and in-depth descriptions (Denzin and Lincoln 2008, 7; Fontana and Frey 2008, 120; Angrosino 2007, 43). It was necessary to learn how different people describe the de-Ba’thification process because it is one of the most controversial policies implemented in post-invasion Iraq. It is also important to emphasize that a researcher needs to identify with the interviewees in order to understand
how they describe the successes and failures of de-Ba’thification (Taylor and Bogdan 1998, 7).

Moreover, archival research allowed me to learn about the inter-agency planning and discussion of de-Ba’thification. I also utilized archival research in order to study the perspectives of significant officials that I was unable to interview. I also obtained data from direct observations in order to understand the Ba’thification process as well as the desirability of and expectations from de-Ba’thification among the Iraqi public. The role of an observer was also beneficial while in contact with U.S. officials even though they are more adept with hiding their emotions.

By triangulating data through interviews and archival research as well as noting discrepancies with direct observations, I aimed to increase the credibility of my findings (Maykut and Morehouse 1994, 146). In addition, in order to strengthen my conclusions, triangulation data helped me to eliminate the limitations of one set of data and to minimize misinterpretations. As with any research, limitations need to be accounted for as well. One of the limitations of interviews would be the possibility that the informants might not always be consistent in what they say (Gibbs 2007, 94). There was always a risk of informants not remembering all of the details of events or allowing the present to color the past. Some of my interviewees, especially U.S. officials, had difficulty remembering the exact details of the de-Ba’thification planning. I also came across the issue of a telescoping effect wherein the present was placed on the past several times throughout my interviews, especially during interviews of Iraqis. They would tend to overreport recent events, and underreport distant past ones (Neuman 2006, 283). Further,
regarding the aspect of informant related problems, researchers can make mistakes while interpreting interviews (Gibbs 2007, 94). These mistakes could be a result of technical problems such as the quality of tape-recording or a language barrier. Also, archival documentation can be incomplete and not accessible. The majority of CPA documents are not open to the public yet and many of the Ba’th party documents that I was able to obtain had a lot of missing pages.

Data triangulation, therefore, helps to provide a picture showing how the pieces connect. This procedure enables the research to be more viable and legitimate, while helping to overcome the limitations of each data collection method. It is also worth mentioning that triangulation enhances the internal validity of my interpretations and conclusions during the data analysis and external validity by confirming conclusions, which are pertinent to the selected case.

3.3.1 Interviews

My study focuses on three major aspects of de-Ba’thification: rationale, design and implementation. Therefore, the most important people to talk with were U.S. and Iraqi elites and experts who were actively involved in the decision-making, planning and implementation of de-Ba’thification in Iraq. In addition to the elite interviews, I decided to learn the perspectives from regular Iraqis who suffered under or supported the Ba’th regime. These formal interviews were useful for learning Iraqi history, the structure of Ba’th party, Iraqi perspectives regarding de-Ba’thification, and the realities of de-Ba’thification implementation that neither Iraqi nor U.S. elites would like to share. I
believe empathizing with those who suffered in Iraq under the Ba`thification process is crucial to be able to understand why many supported de-Ba`thification.

For this study, I also aimed to interview ex-Ba`thists in order to learn how they perceived de-Ba`thification process. However, it was difficult to build trust and persuade those who have supported Ba`th party to answer questions that might put them in a difficult position. Even though some of the interviewees admitted that they were Ba`th party members before 2003, they explained that they registered with the party out of necessity, and that they were never involved in human rights abuses. Some, however, did not want to talk about Ba`th party, but they had a strong and negative opinion regarding de-Ba`thification process. Also, there were some interviewees who accepted the fact that there were high-level Ba`thists in their immediate family, but refused to be associated with the party themselves. Yet many victims of the Ba`th party criticized the implementation of de-Ba`thification. Thus, it was difficult to put regular Iraqis into groups like “former Ba`thists” or “victims of Ba`th,” unless they were willing to disclose this information or share their personal stories.

In total, I conducted 45 interviews: 11 with Iraqi elites, 13 with U.S. elites, 21 with regular Iraqis (for a full list of interviewees, please see Appendix D). I conducted one interview each with 43 of the 45 interviewees. The other two interviewees, Higher National De-Ba`thification Commission (HNDBC) advisor and Feisal Amin Rasoul Istrabadi were interviewed by me on two different occasions. Specifically, I interviewed HNDBC advisor over the phone, and then we met in person. He answered a few additional questions while we went through his first interview transcript. Both of the
interviews I have done with Mr. Istrabadi were over the phone. Mr. Istrabadi did not have enough time to answer all the questions at once, therefore, we scheduled for an additional interview for a later time.

I have conducted in-depth, formal interviews with ORHA and CPA officials, DoD and DoS officials, and Iraqi officials who participated in the design and implementation of the de-Ba’thification process (HNBC and/or IGC members, FoIS participants, politicians). I have also conducted interviews with the Iraqis. Even though most of these interviews were formal, I conducted informal interviews with some Iraqis in various gatherings and meetings.

In order to conduct face-to-face interviews, I traveled to the United Arab Emirates (UAE) in July 2010. I also traveled to Washington D.C. in November 2010 and then returned in October 2012. I decided to visit the UAE because it has absorbed a large number of Iraqi refugees after 2003. My outside reader, Dr. Pete Moore, helped me to get in touch with the staff of the Dubai School of Government, where I had an office space. I have traveled to D.C. because most of the U.S. officials that I wanted to reach out to were still in D.C. despite the fact that the majority of them were not in government posts. I have also been effectively engaged in the Iraqi communities of both Cleveland and Montreal.

I decided not to go to Iraq for this study for variety of reasons. First, the majority of Ba’thists ended up either being refugees in neighboring countries, especially those who have money and resources to run away, or became insurgents. Second, despite my interest in learning about the Ba’thification process from Iraqis, I chose not to interview
Iraqis still living Iraq. Because of the ongoing war, those residing in Iraq assumed their priority would be fulfilling basic human needs and protecting themselves from the warfare rather than talking about their victimization under Saddam Hussein’s regime. Third, the main group of interviewees, Iraqi and U.S. officials who participated in the process in the early days, were mostly retired or living in U.S. Fourth, and finally, I did not want to take the risk of putting myself into danger while the war was still continuing. I still have some regrets about not going to Iraq and not getting a chance to learn how the new de-Ba’thification process under the AJC is working. The assassination of the AJC’s head and the stories I heard about the work of the AJC, however, made me realize again that Iraq is still not a safe place to conduct research on de-Ba’thification. One of the former high-level commission managers, who was afraid to give me an interview, explained that the AJC is now working as an intelligence agency that “imposes censorship on the communications;” “accusing innocent people and clearing people who are not [innocent],” “threatening people,” and “preventing former commission members even from leaving the country.”

All of my interviews helped me to focus directly on my research question and to formulate an analytical structure of what was actually occurring before and during the de-Ba’thification process based on the interviewee’s experiences and knowledge. Accessing more people and gaining more data to use for the analysis was achieved both through a snowball interview technique and detailed Internet research (Taylor and Bogdan 1998, 93). I was fortunate to have an Iraqi friend, Ibrahim Al-Marashi, who was widely published and well connected. Thanks to him, I arranged several interviews with Iraqi
officials, and got connected with the Iraqi community in Cleveland. In addition to Ibrahim Al-Marashi, I had another gatekeeper, who was granted anonymity, who helped me to get connected with several U.S. and Iraqi officials. I contacted them regularly in order to add more people to my interviewee list. I asked all my interviewees to provide me with the names of at least two individuals that I might contact to improve my study. It was surprising that even the elites were willing to share the contact information of other potential interviewees. As Goldstein articulates, “…there are no silver bullet solutions, and scheduling and completing elite interviews takes a fair bit of luck.” (2002, 671) I was very lucky in that sense.

Snowball sampling helped me to reach people whose experiences were relevant for my research. When I was in the UAE, I tried to make contact with Iraqi student organizations in order to reach university students and, therefore, their families. Some were not willing to give me an interview. Later, I learned their parents were rich and connected Ba’thists who left Iraq before the de-Ba’thification order was issued to protect themselves.

All of the interviews were semi-structured in format. I followed the interview protocols that I prepared for each group of interviewees, but I decided to ask different questions or adjust some of the protocol questions depending on the context of interview or experiences of interviewees (for the interview protocols, please see Appendix C). For instance, when it was hard to build trust, I tended to ask informal and personal questions such as their education, background or occupation (Leech 2002, 666). In some situations, I asked very simple questions, and I played “dumb” in order to show the interviewee that
I do not have any other agenda than writing my dissertation. This process usually lowered their suspicions of me. Appearing to know little, especially in the Iraqi context, was necessary at certain levels. Nevertheless, Leech (2002, 665) argues that “playing dumb” might create a problem that interviewees might start feeling like they are wasting their time with an “idiot.” I believe that “playing dumb,” but limiting it to a certain level, was necessary especially when interviewing Iraqi elites. They cared more about educating the researcher than just answering the questions. What I learned through my interviews with Iraqi elites was that as a researcher one should seem professional and generally knowledgeable, but less knowledgeable than the respondent on the particular topic of the interview (Leech 2002, 665). For U.S. elites, however, it was necessary to know the details of your research. I learned that you cannot “play dumb” with Americans. Their goal was not educating me as a researcher but answering my questions and only commenting on what they have witnessed. Therefore, when interviewing U.S. elites, I had two requirements of myself in order to look very professional: I should do my homework and demonstrate that I am becoming an expert in this area.

Having interview protocols are beneficial for two reasons. First, the pre-established questions decrease the chances of variation in responses, which increases the reliability of the research (Fontana and Frey 2008, 124). Second, it is hard for most of the interviewees to speak about their stories, experiences, or recollections in an organized fashion. For that reason, interview protocols are necessary to organize the interview process both for the researcher and the interviewee (Gillham 2000, 16).

The length of each interview was between 45 minutes to two hours. Both personal
or descriptive questions and open-ended questions about de-Ba’thification process were asked. When interviewing regular Iraqis and Iraqi officials, I used direct questions such as “Can you tell me about your life under Saddam Hussein’s Ba’th regime?” or “What was your occupation?” When interviewing U.S. officials, I started the conversation by asking details of their occupation, daily tasks, and how they were chosen for their position, for instance, as the advisor at the CPA. Many of the regular Iraqis, especially those who were victimized by the Ba’th party, were willing to talk about themselves. They were even honored to be asked to tell their individual stories, so it was not difficult to establish rapport (Taylor and Bogdan 1998, 95). This experience was also the case for some Iraqi and U.S. elites who were very enthusiastic about de-Ba’thification. Most of them were proud to be supportive of my research and any scientific study of de-Ba’thification that can contribute to the advancement of the literature (Liting 2009, 105).

Descriptive questions were very helpful to build close rapport and to get more information out of interviewees when necessary (Taylor and Bogdan 1998, 102; Fontana and Frey 2008, 132). For most of the interviews, I also built rapport with the interviewees by having some small talk before turning on the tape-recorder. This usually helped to break the ice. I also tried to keep in mind that being non-judgmental, listening the interviewees with patience, paying attention to what has been communicated, and, most importantly, being sensitive was necessary for successful interviewing and gaining interviewees’ trust (Taylor and Bogdan 1998, 99-101; Yow 2005, 160). I believe these principles helped me to play a neutral role and prevented me from injecting my personal opinions, which I have to admit was really difficult at times (Fontana and Frey 2008,
Moreover, giving interviewees an opportunity to read and comment on their interview transcripts was helpful to maintain trust (Taylor and Bogdan 1998, 96). This process was one of the methods I used when interviewing U.S. officials. Many of them asked me to let them know when they are directly quoted. These officials were ready to open up after they got their guarantee that they will have a chance to comment on their transcripts and quotations. Another great method of establishing rapport, especially with regular Iraqis, was to assure confidentiality. As shown in Appendix D, 16 of the interviewees were granted anonymity. Using pseudonyms and disguising the research locations for interviews helped me to easily connect with the interviewees (Christians 2008, 193). Some even allowed me to use a tape-recorder since their identities were protected. Most of the time I allowed the interviewees to decide on the location where the interview was to take place. I thought that they would feel comfortable and talk more freely “on their own ground” rather than at an unfamiliar location (Gillham 2000, 8).

After I established a balanced rapport with the interviewees, and they were given a chance to freely tell their personal and general experiences, I used open-ended questions to learn more about de-Ba’thification. Open-ended questions provided a great opportunity for the interviewees to organize their answers within their own points of views and allowed me to capture these different perspectives (Aberbach and Rockman 2002, 674; Patton 2002, 21). In-depth engagements with the interviewees through open-ended questions also increased the validity of their responses (Aberbach and Rockman 2002, 674).
I conducted 22 face-to-face interviews and the rest were done over the phone. Telephone interviewing is usually criticized because it loses the quality of face-to-face traditional interviews (Gillham 2000, 12). Even though I agree with this criticism, there are some constructive aspects of phone interviewing. In some situations, I offered to conduct a phone interview to save travel time. When I was in the UAE, I did a couple of phone interviews with individuals who did not want to sit down with me in person. I believe this was a preemptive strategy to protect one’s own identity. Most of the U.S. officials also preferred to do the interview over the phone since it was easier for them to manage their time. I also think that phone interviews gave interviewees power to talk even more freely on their own ground because they were physically alone. I have to admit that it was difficult to establish trust, but having small talk right before the interviews, such as asking personal questions, assuring confidentially and allowing them to comment on the transcripts, helped me to deal with this challenge.

I used a tape-recorder in order to pay close attention to what is being communicated, to facilitate the use of a conversational style, and to minimize any information loss (Aberbach and Rockman 2002, 675; Gorden 1998, 55). A tape-recorder was particularly useful when conducting face-to-face interviews since it prevents the distraction of note taking (Gorden 1998, 176). Moreover, tape-recording enabled me to interpret the meaning and judge the validity of all the responses in both face-to-face and phone interviews (Gorden 1998, 176). When the interviewee did not sign the audiotape consent form, I used detailed notes in order to eliminate any information loss. 34 out of 45 interviews were tape-recorded. All of the interviews were transcribed verbatim in
order to have a more rigorous and all-inclusive data analysis. Since the tape-recordings and even the transcriptions miss extra remarks said before and after the interview as well as many impressions about the setting, context and feel of the interview, I also wrote out detailed field notes after every interview (Bogdan and Biklen 1998, 108; Gibbs 2007, 11). These detailed notes from the interviews allowed me to follow the new patterns and the ideas emerging during the interviews and to capture the general feel of the interviews.

In addition to the interviews I conducted, I benefitted from many other interviews conducted under the support of several governmental and non-governmental organizations. I used transcripts from the United States Institute of Peace (USIP) Association for Diplomatic Studies and Training Iraq Experience Project. I also used the Public Broadcasting Service (PBS), Frontline interviews from the documentaries titled “The Lost Year in Iraq,” and “Truth, War, & Consequences.” These resources helped me to learn more about the perceptions of the U.S. government officials, mainly ORHA and CPA staff, and some U.S. military officers. In order to get the perspectives of individuals who are critical for understanding de-Ba`thification, especially those who refused to be interviewed or did not respond to my interview requests, I utilized information obtained from interviews conducted by different media sources in addition to those listed above. For instance, in order to learn the perspective of Ahmed Chalabi, I used previous interviews he gave to Fox News, Asharq Al-Awsat, and The Middle East Quarterly.

Another source of data I used was the “Iraqi Voices: Attitude towards transitional justice and social reconstruction” study conducted by the ICTJ with the Human Rights Center (HRC), University of California, Berkeley. This research was a qualitative study
design including personal interviews and focus groups. The major goal of this study was to explore “the opinions and attitudes of national and community leaders and civil society representatives, as well as general population,” specifically on human rights abuses, accountability and justice. The researchers reached 395 people—representing the major ethnic and political groups of Iraq—conducting 38 interviews and 49 focus groups between July 18 and August 13, 2003. The reason for using this data was to understand to what extent de-Ba`thification reflected the opinions and the voices of everyday Iraqi citizens. These interviews enabled me to profoundly expand my knowledge about the issues discussed outside the official territories.

3.3.2 Archival Research

I decided to use archival research in order to supplement interviews because documentation provides stable, unobtrusive, exact and broad coverage of de-Ba`thification (Yin 2003, 86). It also helped me to observe whether the issues and concerns that emerged from my interviews were mentioned in the necessary documents. Moreover, through archival research, I learned more about the design and the implementation of de-Ba`thification.

The main group of documents that I used was the official CPA orders and memoranda. These documents were necessary to understand the decisions of the CPA concerning the design and implementation de-Ba`thification. Table 3.1 helps to explain and list the related CPA documentation. In addition, I used Congressional testimonies, hearings, briefings and reports, CPA’s internal memos and notes, and the FoIS proceedings. I utilized information from reports produced by institutions and think tanks.
such as ICTJ, newspaper and magazine articles, and blog entries.

Table 3.1. Official CPA Documents.

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</tr>
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<td>1</td>
<td>05/16/2003</td>
<td>De-Ba’athification of Iraqi Society</td>
</tr>
<tr>
<td>2</td>
<td>05/23/2003</td>
<td>Dissolution of Entities</td>
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<td>4</td>
<td>05/25/2003</td>
<td>Management of Property and Assets of the Iraqi Baath Party</td>
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<td>5</td>
<td>05/25/2003</td>
<td>Establishment of the Iraqi De-Baathification Council</td>
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<tr>
<td>15</td>
<td>06/23/2003</td>
<td>Establishment of the Judicial Review Committee</td>
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<tr>
<td>22</td>
<td>08/07/2003</td>
<td>Creation of a New Iraqi Army</td>
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<tr>
<td>48</td>
<td>12/10/2003</td>
<td>Delegation of Authority Regarding an Iraqi Special Tribunal</td>
</tr>
<tr>
<td>62</td>
<td>02/26/2003</td>
<td>Disqualification from Public Office</td>
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<td>Number</td>
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<tr>
<td>1</td>
<td>06/03/2003</td>
<td>Implementation of De-Baathification Order No.1</td>
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<tr>
<td>7</td>
<td>11/04/2003</td>
<td>Delegation of Authority Under De-Baathification Order No.1</td>
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Note: Orders are binding instructions or directives to the Iraqi people that create penal consequences or have a direct bearing on the way Iraqis are regulated, including changes to Iraqi law. http://www.iraqcoalition.org.

Memoranda expand on Orders or Regulations by creating or adjusting procedures applicable to an Order or Regulation. http://www.iraqcoalition.org

All the above-mentioned documentation was accessible over the Internet, even though the majority of the government documents were not available until late 2012. The list of all the CPA documents is available online as an excel sheet, but only a small number of these documents have become available to the public. I applied for material under the Freedom of Information Act (FOIA), requesting the CPA documents pertaining to de-Ba’thification. Yet, the response I got was that my list is too long, so I should limit my request in order to speed up the process. Even though I did limit my request, I could not obtain the documents listed in my request. The reasoning of the FOIA analysts was that the review process is lengthy, and it will take too much time to
make the documents available to the public. Some of the websites that I used and regularly visited were the official CPA website, the US government Printing Office, the Office of Secretary of Defense and Joint Staff – FOIA Requester Service Center, National Security Archive of George Washington University for the New State Department Releases on the FoIS, the U.S. Department of State Archives, and Iraq Watch website that was published by the Wisconsin Project on Nuclear Arms Control from 2000-2006.

Some historical information, such as inter-agency planning of the de-Ba’thification process, or inner workings of the ORHA and the CPA and their interaction with departments of State and Defense, were accessed through history books and memoirs. Some of these books are “Occupying Iraq: A History of the Coalition Provisional Authority” by James Dobbins et al., “Reconstructing Iraq: Regime Change, Jay Garner, and the ORHA Story” by Gordon W. Rudd, and the memoirs of Douglas J. Feith, L. Paul Bremer, Donald Rumsfeld, and Richard N. Haass. These books were useful for understanding historical events especially when interviewees would refer to them.

3.4 Observations and Reflections

Since 2010, I have met with and talked to many people who changed the future of Iraq. I have also listened to mesmerizing and touching stories of individual Iraqis. Hence, it was nothing but an instinct to collect and write concrete and detailed observations as much as possible. Even though I used interviews and archival research as the main data gathering methods, I documented my observations after every interview and gathering I
attended. In addition to writing my observations, I wrote about my personal feelings, doubts, pleasures and anxieties about the research (Gibbs 2008, 30-31).

In the last two years, I have learned that there are nuances to what Ba’th membership meant and who the perpetrators were in Iraq. There were Saddamists, who believed in Saddam Hussein and his method of governing. I have talked to an Iraqi student when I was in Dubai who adored Saddam Hussein; her eyes were sparkled with excitement when she said, “he [Saddam Hussein] was like my baba—father.” There were Ba’thists who believed in the ideology of the party. There were also Ba’thists who had no political ideology, but who had goals such as providing for their families or benefiting from privileges of the party like it was a sorority or fraternity. I also learned from many people that there were individuals who had survived and provided for their families without being Ba’th party members. I have listened to the stories of individuals who played a double game: holding public sector posts while telling lies to Ba’th officials about their registration to the party.

There were also the victims of Ba’th. I have listened to these victim stories: people whose family members were tortured, gone missing and returned back after 20 years. I have listened to the story of a poor man who had to take care of his parents after the disappearance of his seven brothers. I have learned what kinds of sacrifices the Kurdish population of Iraq made. I have witnessed the emotional outbursts of women who could not find enough food to feed their kids. I have learned how parents taught their kids to love Saddam Hussein even though they were opposed to the regime in order to protect their lives. I have observed their never-ending fear of the Ba’th or the new
untrustworthy regime. The majority of Iraqis I have interviewed were refugees. Many were still afraid and cautious, yet extremely relieved to be able to talk about their past and even have a say, which they have never had before. All these people, perpetrators, those forced to be perpetrators, and the victims, could be from the same family. Through my interactions with Iraqi officials, who were mostly former exiles, I have observed how their political ambitions won over their idealism. Some of these stories can be found in recent books, but I think listening to these stories firsthand and observing people’s reactions and emotions taught me that victims and perpetrators are not easy to separate. As one Iraqi scientist described, “there is no white and black, but a lot of grey in Iraq” (interview with Iraqi scientist July 9, 2010).

During my interactions with U.S. officials, I have read the anger and shame on their faces while discussing their mistakes or the mistakes of the U.S. administration of Iraq in general. I have also observed how some high-level U.S. officials tried to save their reputations without waiting for me to ask questions. I have witnessed people accusing each other for their own mistakes.

Mostly, the observations and stories were harsh to take in yet invaluable for my study. I have engaged in informal discussions with Iraqis in Cleveland and Montreal. I have spent time with Iraqi students in the UAE. I have also attended an annual meeting of the Association for the Study of Middle East and Africa in 2012. I have observed two major themes that were very critical to understanding the de-Ba’thification process and how people perceived or were convinced to perceive it. First, the term that was used to define the Operation Iraqi Freedom in 2003 changed in different venues, and this change
provided a huge clue about how people perceive the role of occupying forces and therefore their policies. These two terms were occupation (with the belief that everything was bad under Saddam Hussein, but now everything is worse) and liberation (with the belief that “thank god America saved us”). Second, the sectarian and ethnic divisions within Iraq became more evident to me after spending time with Iraqis. For some, talking about these divisions is nonsense, because they only became apparent after 2003. There were even more Shi`i’s holding top-level positions in the party and in the government than Sunni. Whereas, for the rest, Saddam was brutal against the Shi`i, and the highest positions were always occupied by Sunnis. Thus, a process such as de-Ba’thification was necessary.

In addition to these observations, I have gained greater insight about the role of gender and other characteristics in qualitative research. I have found myself occasionally deploying gender and sometimes ethnicity and religion in the field. As Mazzei and O’Brien observe, asking questions about controversial and political issues in societies where the role of women is just being a mother or a wife is challenging (2009, 368). I have managed the challenges of being a female researcher in patriarchal environments. Although regular Iraqis that I have interviewed were living in Western societies, their male-dominated life styles were still evident. During the interviews or informal conversation it was apparent that men were more apt to interrupt or try to correct women than women were in correcting the men (Zimmerman and West 1975 in Yow 2005, 171). It was simply impossible to interview women who met with me while their husbands or brother-in-laws were around.
I met a lovely Iraqi couple at one of the Iraqi community events in Cleveland. These newly-weds were working in a non-governmental organization that aims to build a civil society in Iraq after war. It was difficult to have a long chat with them during this gathering because of loud music and women sitting separated from men at various points. Therefore, we decided to meet later that month for a formal interview. A couple of weeks later, the wife invited me to their relative’s house. I had also met with this relative during the same gathering. It was a great opportunity for me to get to know two Iraqi families who had recently moved to Cleveland. When I arrived at their house with my husband, I learned that her husband was out of town. So it was my husband, the wife and her newborn, the relative, the relative’s wife and their kids and me. The relative who had worked for the CPA back in Iraq gave me a great interview, but it was difficult to really ask the same questions to the wife. I expressed my interest in interviewing her as well. Yet it was hard to focus on what the wife was saying because she was interrupted several times, and she had other tasks like bringing food to the table and refilling empty tea glasses. At times, she shared some interesting stories but the relative was the one who dominated the conversation.

For this family like most of my Iraqi interviewees, I was “the third gender” or in other words a western female scholar (Schwedler 2006). For them, I was Muslim, Turkish and female. I was neither one of them nor totally different from them like a westerner. Therefore, I had to be very careful and strategically deploy gender and other characteristics in order to have successful entry and easily establish rapport (Mazzei and O’Brien 2009, 380) For instance, I chose to go the relative’s home with my husband. I
wanted to show them that I shared some values with them. I also shared my interview questions with my husband, just in case the relative felt more comfortable talking to him than me. This strategy gave me an opportunity to take detailed notes and to connect with the women of the family. These people were lovely individuals, and I am pretty sure they would have welcomed me the same way if I had not had my husband with me. Yet, I believe being with my husband helped me to more easily establish rapport and that may have had an impact on the quality of the data that the interview generated.

When interviewing U.S. officials, I observed being female was not an obstacle but an advantage. Most likely, many of them thought that as a female, I am harmless (Warren 1988, 136). On the one hand, some were very patronizing. Their tone of voice, language and communication style made me feel like a female researcher who is interested in a male-dominated field. For them, I was not as competent as a male researcher (Abels and Behrens 2009, 145). On the other hand, some of them were very fatherly. Yet in both situations, I thought being female helped me to get easily connected with more top-level U.S. officials and gave me the power to ask any question I wanted to ask without being seen as harmful or threatening. However, I always kept in mind not to put myself in compromising or dangerous situations when I would flaunt my gender (Mazzei and O’Brien 2009, 378).

I also observed how ethnicity, nationality and religion could pose more obstacles or sometimes advantages than gender especially when interacting with Iraqis. When the interviewees would ask about my religion, after learning my nationality, in order to learn whether I am Sunni or Shi‘i, it often got challenging. I have encountered comments such
as “You are Sunni and you would never understand the sufferings of Shi`i.” However, religion could be very helpful especially when the interviewee does not have any problems with the Shi`i and Sunni divide. I was interviewing one gentleman when I was in Dubai who was very careful of what he would say to me. After fifteen minutes during the interview, he said, “I am not sure if you know anything about Islam…” He was kindly asking whether I am Muslim or not. I was not sure what to say. I could have just said that I was familiar or not, but I wanted to take a risk and decided to disclose my religion. After I told him that I am Muslim, he opened up and even told me that he worked for the Ba`th party.

Furthermore, when I was interviewing a Kurdish family in Sharjah, I realized something that I had not realized while interviewing other Iraqis. It is in fact hard to interview people outside one’s own ethnic group without getting distracted or sometimes being offended (Zimmerman and West in Yow 2005, 177). I had listened to this family’s victimization under Saddam Hussein’s regime for almost half hour when the story ended with this statement: “We wanted to run away from Iraq and decided to go to Turkey, but you did not take us.” She was not trying to be offensive, but this hits me with the reality that I could be blamed because of the decisions of the Turkish government. If I had tried to delve into a discussion or even try to separate myself from my government’s decisions, the consequences could have been detrimental to the interview.

The overall picture shows that my role as an observer allowed me to learn the details of the Ba`thification and de-Ba`thification processes and the meanings of events. Observation helped me to walk in the interviewees’ shoes, see things from their
perspectives and, therefore, present a thorough description of details and nuances rather
than sticking to the surface (Geertz 1973; Taylor and Bogdan 1998, 135; Angrosino
2007, 16; Gibbs 2007, 4). Moreover being aware of the role of gender, ethnicity,
nationality and religion during the data collection process allowed me to be more
cautious when necessary and opened other doors when possible.

3.5 Data Analysis

Qualitative inquiry stockpiles huge amounts of raw data that can only be managed
if organized well and in a timely fashion (Denzin & Lincoln 2008; Yin 2003). The data
should be continuously interpreted, because of the reflective nature of qualitative study
(Stake 2008, 128). Given that, I analyzed data simultaneously with the data collection. I
transcribed interviews and synthesized the field notes and memos. While reading the
transcripts, and documents, I traced for critical expressions, events or themes. After the
raw data were managed, I imported all of the interview transcripts including those I did
not personally conduct and other documentation to the qualitative analysis software in
order to code the themes. This software assisted me with handling large amounts of data
in an organized fashion.

I started the coding process with open coding in order to locate emerging themes
and assign initial codes to condense data into categories (Neuman 2006, 461). In this
stage, I did not have an established codebook, but I had a preliminary idea of what the
codes would be. Since I prepared interview protocols after studying the literature, I had
some ideas on how to code interviews to learn the rationales, design and implementation
of de-Ba’thification. Hence, the concepts existing in the literature assisted me during this
data driven coding process (Gibbs 2007, 45). Later, I used an axial-coding method in order to make connections among themes and generate an initial code list (Neuman 2006, 462).

With these processes of coding, I attempted to identify how each interviewee understood the rationales and the justifications for de-Ba’thification. It helped to compare and contrast the rationales given by the CPA, DoS, DoD, ORHA, experts, Iraqis (both post-2003 and pre-2003 exiles), HNDBC, FoIS participants, and other Iraqi politicians. Coding also assisted me with comprehending whether the interviewees representing the same institutions or groups expressed similar concerns and rationales for de-Ba’thification. During this process, I also became familiar with the emerging themes and concepts regarding the design and implementation processes.

Data analysis has to fulfill some of the analytic quality requirements of qualitative research, such as validity and reliability. Validity, or in other words a true and accurate presentation of explanations in this research, was fulfilled through data triangulation and respondent validation (Gibbs 2007, 91-95). I have read each transcript at least twice in order to detect statements that would seem to be incorrect and inconsistent. In this process, I also utilized my field notes and memos to cross-check. Some interviewees helped me during this process by reading their transcripts and correcting mistakes when necessary. Overall, I had few problems transcribing interviews accurately.

Reliability, dependability and consistency were also important for this research. Different researchers, even if they use the same measures, might get different results. The main reason is that data collection is an interactive process in qualitative research.
Furthermore, researchers operate in an evolving setting, so that some measures cannot be repeated (Neuman 2006, 196). Nevertheless, Gibbs (2007, 98) argues when a researcher is alone in coding, it is important to show that the researcher’s approach is consistent across different researchers and projects. In order to achieve this, he suggests transcription checking and code crosschecking. As a sole coder, I tried to ensure reliability by building an audit trail through transcripts and field notes (Lincoln and Guba 1985 in Maykut and Morehouse 1994, 146).

3.6 Conclusion

Qualitative research methods and diverse data collection methods allowed me to answer the main questions of this study: What are the rationales for de-Ba’thification? How was it designed and implemented? How were the rationales incorporated in the design and implementation of de-Ba’thification? They also helped me to gain greater insight about life under the Ba’thist regime.

During this research, I have supplemented my data with observations. Observations not only provided me with additional information but also helped to me triangulate my data. The personal experiences detailed in this chapter also allowed me to learn the dilemmas of conducting qualitative research, and therefore, prepared me to be more careful for possible challenges and tasks.

There were some limitations to this study such as not being able to interview everyone that I initially planned to speak with or the difficulties with phone interviewing and establishing a rapport. Nevertheless, this study allows for a rigorous examination of
de-Ba’thification process in Iraq. The next chapter starts with the analysis of the rationales for de-Ba’thification.
CHAPTER 4
Rationales for Engaging in De-Ba’thification

4.1 Introduction

This chapter starts out by discussing the Ba’thification process under Saddam Hussein administration and his Ba’th regime in the 1970s. Understanding Iraqis’ perceptions of de-Ba’thification and the justifications for it cannot be separated from the Ba’thification process because these two processes are based on the idea of eliminating those who are considered threats to regime security. Next, this chapter lays a foundation for the emergence of the original de-Ba’thification idea. The initiation of the de-Ba’thification process is explained by Coalition Forces including pre-war discussions on de-Ba’thification. Furthermore, this chapter surveys the existing literature on the rationales of disqualification efforts to set the tone for understanding unique rationales provided for engaging in de-Ba’thification by different stakeholders. Lastly, this chapter describes and analyzes the rationales given by U.S. officials and Iraqi elites for adopting de-Ba’thification and the interpretations of these rationales by ordinary Iraqis.

As explained in a review of the literature in Chapter 2, there can be numerous rationales for vetting (Duthie 2007). In general, the immediate rationales are to neutralize the influence of the former regime in the new political situation. The broader and long-term aims are to transform institutions to facilitate the democratic transformation and to prevent future human rights abuses. Even though these short-term and long-term
rationales are the common motivations, in this study I argue that there are some unique reasons for establishing the extensive purging process in Iraq. Americans and Iraqis who are involved in the decision-making and implementation phases of de-Ba’thification have different ways to rationalize the adoption of de-Ba’thification in Iraq. Also, Iraqis directly or indirectly being affected by the process have different interpretations of these rationales. I argue that each rationale and interpretations should be investigated within its political environment in order to make accurate assessments about the design and implementation of de-Ba’thification and to analyze if the de-Ba’thification process fulfilled the original goals.

4.2 Ba’thification: Brainwashing, Fear, and Purges

As Ghanim claims, “[b]oth Ba’athification and de-Ba’athification are two sides of the same coin, and they share the same values of violence, exclusion, revenge, and intolerance” (Ghanim 2011, 67). In order to put the Iraqi response into perspective and uncover de-Ba’thification, background information on the beginning of the Ba’thification process is addressed in this section.

In Iraq, purging was a natural practice even before de-Ba’thification. For instance, when Ba’thists seized power under Hasan al-Bakr and Saddam Hussein in 1968, they used various control mechanisms, purges, executions, and assassinations as the means to consolidate their power, to purify the system from anti-Ba’thists. In 1977, Law No. 35 legitimized these practices and guaranteed that people who were against the Revolution and its program would be excluded from citizenship (Makiya 1989, x).

As soon as Saddam Hussein became the president in 1979, he started his own
method of Ba’thifying Iraq. In a televised speech in which he announced his presidency, he set the tone for his leadership: “Anyone who attempts to take this government from our hands, shall receive Iraq as a land without people” (Kubba 2003, 1). He used the Ba’th party to take over the state and then strategically used the party’s resources to incorporate social institutions as well as individuals into the party (Faust 2012, 42). Unsurprisingly, one of the methods he used was the purge. He purged his predecessor President Ahmad Hasan al-Bakr and his supporters within the party. He also purged the top Ba’thi command and executed one-third of the members of the Revolutionary Command Council, along with many of his friends and family members. In July 1979, in an infamous party meeting, Saddam Hussein revealed a plot to overthrow him in which some members of the party admitted participating (Sassoon 2012, 199). Paul Wolfowitz told this story in a 2004 Congressional hearing:

At a meeting of the Iraqi National Assembly, Saddam, with tears running down his cheeks, and puffing on a cigar, talked about the ‘confession’ of disloyalty they had received from a top party member, and then continued one by one to name other guilty colleagues. One by one, guards dragged these people out of the meeting. And then Saddam asked top ministers and leaders of the party for their first loyalty test: they were required to participate in the firing squads that executed those he’d identified. And he didn’t stop there. He had videos made of the whole event and distributed throughout the Middle East so people would know what kind of a man he was. Implicating members of his regime in his worst crimes and ensuring that his potential victims understood that his threats were to be taken seriously, in doing that, Saddam Hussein applied the techniques that any FBI agent will tell you are the techniques of a gangland boss, but he did it on a national scale and as the head of an internationally recognized government (U.S. Senate 4/20/2004, 9).

These purges and executions symbolized the rise of Saddam Hussein as a leader and the shift in support from the party to the person (Makiya 1989). Attacking the Ba’th party and its principles, and cursing Saddam Hussein and his family equated to national
treason (Sassoon 2012, 198; Faust 2012, 33) and many were punished with tongue amputation (White House Background Paper on Iraq, 2002). Hence, the new ideology became “Saddamism.”

Saddam Hussein created a state of fear and brutality, as in Stalin’s Soviet Republic or Hitler’s Germany, and intensified the Ba’thification of the military, secret police, and state bureaucracy. He did not have any tolerance for dissent. Both non-Ba’thists and party members suffered severe punishments (Sassoon 2012, 276-277). As a Kurdish student explained, “Saddam Hussein did not discriminate when it came to punishment; he equally punished all” (interview with Kurdish student July 6, 2010). Similar to Stalin, he used psychological and physical force in order to protect himself from disloyalty. He established an extensive web of control so that no one could escape from punishment. These control mechanisms varied from engaging in surveillance of ministerial activities to infiltrating military life and watching over the marriage of party members.

Saddam Hussein trusted no one, including his closest family. He had the belief that he was surrounded by enemies. This constant paranoia made the use of control mechanisms and force inevitable. Saddam Hussein explained this paranoia in his semiautobiographical book, rijal wa madina, as follows: “he who is not alert, even with a long stick, the dogs will covet him and bite him” (cited in Sassoon 2012, 193). For instance, he treated Iran as Iraq’s natural enemy. In 1980s, he ordered the deportation of Iraqi citizens with Persian ancestry to Iran. Mr. Daood, an Iraqi doctor told me his grandfather’s story:
There was no Iraqi identity card (ID) under the Ottoman rule. You were either Ottoman or Iranian. My grandfather got the Ottoman ID. If you had the Ottoman ID, you had to do military service. He had a business at that time, so he changed his ID from Ottoman to Iranian. However, his brothers kept their Ottoman IDs. After the Iraqi government was established, the government distributed an Iraqi ID. On your Iraqi ID, it was written either “Ottoman origin” or “Iranian origin.” Nothing had happened until Saddam Hussein came to power. When he became the president people who had “Iranian origin” written on their ID were sent to Iran. Thousands of families were displaced (interview with Ali Daood, March 15, 2011).

Teachers who were “disloyal” to the regime or to the president as well as those who had relatives in opposition parties were either expelled from their posts or transferred to less sensitive positions (Faust 2012, 149). In order to coup-proof his regime, Saddam Hussein established military bureaus to penetrate the army with political ideas (Sassoon 2012, 130). Moreover, torture techniques such as “branding, electric shocks administered to the genitals and other areas, beating, pulling out of fingernails, burning with hot irons and blowtorches, suspension from rotating ceiling fans, dripping acid on the skin, rape, breaking of limbs, denial of food and water, extended solitary confinement in dark and extremely small compartments, and threats to rape or otherwise harm family members and relatives” were used preemptively against those who were allegedly treacherous (White House Background Paper on Iraq, 2002).

Fear and the threat of violence were not the only sources of compliance. Party membership became critical for employment and for pursuing higher education. Ba’th party membership was essential for any government job. Many joined the party out of fear and pragmatism because the price of defiance was so high (Ghanim 2011, 63). On the other hand, many were attracted by the rewards offered (Sassoon 2012, 8). Those who were loyal to the party and the president received several intiyaz (privileges)
including: luxury cars, special medals, lands, extended health coverage, extremely high salaries, and many other rewards and status (Sassoon 2012, 140-141). For instance, those who were rewarded with the identity card of “the Friends of Saddam Hussein” had several *imtiyaz* ranging from additional points added to the final average for the identity card holder and his/her family when applying for schools and universities, the honor of meeting with the president at least once a year, grants and holiday bonuses, to annual gifts such as summer and winter suits (Sassoon 2012, 209). The monthly salary of a doctor or a university professor was between one to three dollars, unless they were registered with the Ba’th party. One’s salary could be multiplied by hundreds, if one became a Ba’th member (interview with Mishkat Al-Moumin November 19, 2010; interview with Alaa Al-Tamimi February 2, 2011).

The Ba’th party “took the souls” of those people who joined the party for various *imtiyaz*, and it used these people for devious demands (Kubba 2003, 10). These demands included: checking rumors, snitching on neighbors, reporting on individuals, and writing reports about friends’ or neighbors’ loyalty to the party and the president. According to one of the interviewees, “Ba’th not only wanted to follow people or observe their activities but also wanted to understand these people’s minds… They [Ba’th party officials] put you in a position so that in order to save your life you had to sell out your friends, neighbors and even relatives” (interview with Iraqi translator March 17, 2011).

Saddam Hussein had the ambition to make all Iraqis members and believers of Ba’th, therefore, recruitment and indoctrination were particularly important for his Ba’thification project (Sassoon 2012, 45). Party headquarters collected statistics of party
membership on a regular basis and developed strategies to increase recruitment (Sassoon 2012, 50-53). Encouraging young people to join the party was especially important because of the party’s aging cadre. Saddam Hussein wanted to control Iraqis from childhood, indoctrinate, and guard them against other political ideas and religious pressures (Sassoon 2012, 270). Children were accepted as the future of Ba’th. Therefore, brainwashing began in the early ages at school. A Kurdish teacher recalled that one day her younger brother brought a poster of Saddam Hussein home from school and started praising him, and that made her very uncomfortable (interview with Kurdish teacher July 6, 2010). Not only did schools, but also parents started to brainwash their children in order to protect their families because the party manipulated kids to learn their parents’ activities. Mariam, who was a teenager when the Iraq war started in 2003, told me that her parents were warning her every time she went to school if someone asked her what she thought about Saddam Hussein, she was supposed to say, “I love him, he is our baba [father]” (interview with Mariam July 8, 2010). Still today, Mariam thinks Saddam Hussein was a great leader. Monin, who was also a teenager when the war started, explained that “When my parents were talking about Saddam, they never said ‘Saddam.’ They referred to Saddam as ‘he’ in our house, even though there was just me and my sisters. There were rumors that the party was everywhere and they were afraid. They did not want us to know what they were talking about” (interview with Monin July 12, 2010). A classic example that illustrated this point was when Saddam Hussein was on national television one night with a four-year-old girl. Saddam had asked the girl what her father said when her father saw him on television. The little girl replied that her father
spit on the television when he saw Saddam. The next day Saddam ordered the father to be killed (interview with Iraqi intellectual July 7, 2010).

Media sources were extensively used to spread the principles of the Ba’th party to the Iraqi public. In addition, madrasat al-‘idad al-hizbi (the Party Preparatory School) were utilized to expand indoctrination (Sassoon 2012, 63). Party members were required to participate in various courses in these schools. Some course topics included: party organization and principles, national and regional issues, Ba’thist ideology, party history, party and religion, and Saddam Hussein’s achievements (Sassoon 2012, 64-5). Members were also required to attend regular party meetings in their neighborhoods. An old Iraqi diplomat described, “We had to live, and in order to live, we had to register. Even though I was never a Ba’thist, mentally, I registered with the party because I just wanted my job and wanted to take care of my family” (interview with Iraqi diplomat July 6, 2010). He also explained, “If you were registered for Ba’th, no matter what, you had to attend an hour long meeting every ten days to learn the Ba’th ideology, how perfect the Ba’th party was, and how good and important it was to be Ba’thist” (interview with Iraqi diplomat July 6, 2010). When I asked him what would happen when someone would miss those meetings, he replied, “…you could miss some of them, but when you miss the majority of them, it was easy: they made you suffer and you begged them to kill you” (interview with Iraqi diplomat July 6, 2010).
Figure 4-1. Ba‘th Party Membership Hierarchy.

Note: Sassoon 2012, 46

There were also automatic advancements. After the initial registration, Ba‘th party members were expected to actively participate in Ba‘th party’s neighborhood meetings and activities, and climb up to higher levels in the party hierarchy (see Figure 4.1. for party membership hierarchy). For instance, after 6 months to 1 year a mu‘ayyid could become a nasir, but after ‘udhu ‘amil you needed to be elected within the party for the higher ranks (interview with Raid Juhi Al-Saedi June 11, 2010). Mishkat Al-Moumin, Minister of Environment in the interim government, told me that one of her friends was working in Saddam University and she was holding nasir rank. Even though she did not
attend any meetings, two months later she got promoted and became a *nasir mutaqaddim* (interview with Mishkat Al-Moumin November 19, 2010). The party financially benefited from these automatic advancements. The monthly membership fees were correlated with the membership rank; those who were in the lower ranks of the party hierarchy paid less than those who were in the higher ranks (Sassoon 2012, 85).

Under the rule of Saddam Hussein, schools and universities became propaganda centers. It was required for sixth graders to register with the party until they finished their education (interview with Raid Juhi Al-Saedi June 11, 2010). Students were encouraged to join Saddam’s youth paramilitary and the ones who refused to join were kept in jails (Dowd 2003). Kids were taught how to use Kalashnikov rifles (interview with young Iraqi diplomat March 16, 2011). In high schools, every student had to have the initial registration with the party and had to attend regular meetings. Monin recollected, “one guy in military uniform attended the class and started talking about Iraqi security, the relationship between east and west, things like nuclear energy… the ways of which we should defend our homeland, and the importance of party membership” (interview with Monin July 12, 2010).

The universities were also highly politicized. If a person who had senior Ba’thists in their family applied to college, that person would have automatically gained extra points on the university entrance exam (interview with Ali Daoood, March 15, 2011). Universities were full of party recruiters. Some of these recruiters were students who were willing to show their loyalty to the party by hiring new members. One of my interviewees recalled his encounter with the recruiters,
I was studying French Language in the College of Arts. I remembered some Ba’thists coming to my class with their green uniform. They said everyone has to be Ba’th member. I did not fill out the application, and I remembered there were eight of us [students] in class. One of those guys in a green uniform saw my application and called my name. I stood up and he asked me “Why did not you want to join the party? You should come to the headquarters now!” So two of them took me to the headquarters, and I went through an investigation. They threatened me and said, “If you do not become a party member, you will not be a student in this university.” I was shocked and said, “I cannot be a party member.” Then, they said, “Saddam Hussein loves you and the revolution came here for you. You are poor. You should become a member.” They threatened me and said that they would tell this to the president of the university. They did not leave me alone. I said I was sick and my kidneys were not functioning well. It was not true, but they let me free. But they did not leave me alone. They tried to make me involved in trouble. Every time something happened in the university, they found me, and they told me that I was the source of the trouble. One of my professors who knew me very well helped me. I got really lucky, but not everybody was lucky like I was (interview with young Iraqi diplomat March 16, 2011).

The political science departments were like military bases (interview with young Iraqi diplomat March 16, 2011). The political science students wore uniforms and studied Saddam Hussein’s politics. Any students who refused to be Ba’th party members would be suspected of being a potential terrorist who could revolt against the regime (interview with Kurdish student July 6, 2010). Students from other departments were also under pressure to become party members. One of the interviewees who studied literature told me that besides studying Shakespeare, they had to register for a class titled “political ideology” in which they learned Ba’th ideology in detail (interview with Iraqi translator March 17, 2011).

Furthermore, without actively being involved with the Ba’th party, applying for a higher degree was impossible. Those who had nothing to lose or had enough connections left the country illegally to save their lives and get their graduate degrees. An Iraqi translator told me his story:
When you graduated they gave you some sort of a certificate and, with that certificate, it was impossible to go outside of Iraq to study, unless you were Ba’thi…Before university, I had finished my army service and I had already had my passport—by the way, you have to finish your army duty to get a passport—…When I left Iraq even my mother did not know that I was leaving Iraq permanently. I was so afraid, but I got my passport and left for Britain, and then Ireland. But because my school in Iraq would not give me my transcript, I could not manage to stay there. I asked my Ba’thi friend to help me to get my transcript from the school…After several attempts he did, but then I had no money to enroll at any university. I went to Morocco and taught there for nine years, and then I moved to Canada (interview with Iraqi translator March 17, 2011).

However, some people were not lucky enough to be able to leave the country. For example, a Kurdish teacher rejected becoming a Ba’th party member and had to wait to get her graduate degree for ten years after she finished all of the necessary requirements of her degree. This illustrates the economic and social significance of being a Ba’th party member in Iraq (interview with Kurdish teacher July 6, 2010) Although some voluntarily participated in the party simply because they believed in the ideology, the foremost sources of compliance were either rewards and opportunities or fear. Saddam Hussein used these sources to attract more and more people and to Ba’thify Iraq day by day.

The next section explains the origin and evolution of a long and painful process of cleansing Iraq from this legacy despite the fact that no one knows for sure where the de-Ba’thification order came from until now. The next section describes events that started the de-Ba’thification process.

4.3 The Origins and Evolution of the De-Ba’thification Idea

Saddam Hussein and Ba’th regime lost their power after the first Gulf War. Iraqis used this opportunity to show their opposition to the regime through massive uprisings, which subsequently became known as Sha’aban Intifada after the Muslim month of
However, the uprisings collapsed and many Iraqis were executed randomly on the streets. Those that were able to flee ended up becoming refugees in neighboring countries. Despite the fact that uprisings had failed to topple Saddam Hussein and his government, they helped to mobilize the Iraqi Diaspora. In the early 1990s political opposition groups galvanized the debate about Saddam Hussein’s Ba’thist system and crystallized the idea of transforming Iraq into a pluralist, liberal and democratic country. Ali Abdul-Amir Allawi (Ali Allawi) served as Minister of Trade and Minister of Defense in the cabinet, was appointed by the Interim Iraqi Governing Council from the summer of 2003 until 2004, and also acted as Minister of Finance in the Iraqi Transitional Government between 2005 and 2006. He explained that some in the opposition perceived the Ba’th party to be similar to the Nazi Party in Germany. Because of that, they felt a need to start a process of removing the traces of Ba’th ideology in the post-Ba’th order (interview with Ali Allawi May 21, 2010).

The leading intellectual figure of opposition was Kanan Makiya. His book, *The Republic of Fear*, published in 1989 under a pseudonym of Samir al-Khalil, was one of the first daring attempts to criticize the Ba’th system in Iraq. His book provided an invaluable outlook of the Ba’thist effects on Iraqi political and social history.

The most important political figure of the opposition movement was charismatic and Western-educated, Ahmed Chalabi. In a very short period of time, he established important connections with U.S. officials and media. These connections helped him to convey information about the brutal policies of Saddam Hussein and his party.

The initial mobilization of the Iraq opposition took place in 1992, a year
following the first Iraq war. With U.S. support, two substantive conferences were held in Vienna and Salahuddin. The first umbrella organization for Iraqi opposition, the Iraqi National Congress (INC), emerged out of these conferences (Allawi 2007, 53). The leading figure in Vienna and Salahuddin, Ahmed Chalabi, became the chairman of the executive council of the INC. Many suspected that Chalabi started working for the C.I.A. around that time (interview with Laith Kubba October 10, 2012). As the government changed in the U.S. in 1993, support to the Iraqi opposition diminished drastically. This led Chalabi to boost his lobbying activities in Washington. He was admitted into the neo-conservative alliance\(^\text{16}\) right away (Allawi 2007, 67). His increasing popularity among neo-cons also led to the production of the Iraq Liberation Act (ILA). In 1998, despite the opposition of the DoS, President Bill Clinton signed the ILA into law. With the ILA, the Iraqi opposition formalized its link with the U.S. government. The seven opposition groups were identified by U.S. government as eligible to receive assistance from the U.S. These groups were: the INC of Ahmed Chalabi, the Iraqi National Accord (INA) of Ayad Allawi, the Kurdistan Democratic Party (KDP) of Massoud Barzani, the Patriotic Union of Kurdistan (PUK) of Jalal Talabani, the Islamic Movement of Iraqi Kurdistan (IMIK), the Movement for Constitutional Monarchy (MCM), and the Supreme Council for Islamic Revolution in Iraq (SCIRI) of Al-Hakim family. The total funding that was available under the ILA was set at $97 million (Allawi 2007, 67).

Despite the shared interest of bringing down Saddam Hussein and his regime, 

\(^{16}\) Group of top level officials that promoted the Iraq War.
these opposition groups impeded any attempt to create a unified Iraqi opposition. Each opposition group wanted to have the closest relationship possible with the U.S. government. The Shia Islamist and Kurdish parties were motivated by political advantage and retribution because of the long-lasting political suppression, human rights abuses, and killings under the Ba’th rule (interview with Ali Allawi May 21, 2010). During this time, the tension between Ayad Allawi (INA) and Ahmed Chalabi (INC) reached its peak and this personal rivalry between two distant cousins appealed to different factions within the U.S. government. The conservative congressmen and senators who wanted a radical change in Iraq supported the INC; the DoS and the CIA emphasized the difficulties of such a radical approach and remained skeptical about the role of any opposition group (Allawi 2007, 78-79). In 2001, with the new administration under George W. Bush, the former faction became more powerful.

The turf battle between the DoS and DoD continued after the invasion of Iraq in 2003. For instance, when it came to the planning of post-war Iraq and the adoption of the de-Ba’thification process, the DoS advocated a moderate framework for dealing with the Ba’th party that respected international law and human rights. They rejected the immediate endorsement of émigrés who lacked legitimacy in Iraq. Some officials in the Pentagon, who were influenced by the neo-conservative ideology and supported by right wing think tanks, embraced a comprehensive de-Ba’thification approach, which aimed to create a modern democratic Iraq (interview with Ali Allawi May 21, 2010). These incompatible perspectives within U.S. officialdom and the prospects of the Iraqi Diaspora were very influential in structuring the de-Ba’thification process in Iraq.
Almost a month after the September 11th attacks, and over a year before the invasion of Iraq, a group of Iraqi intellectuals, lawyers, engineers, businesspersons, doctors, and other professionals, led by a senior DoS officer of the Bureau for Near Eastern Affairs, Thomas S. Warrick, met in Washington, D.C. to discuss the future prospects for Iraq and produced a thirteen-volume study. Ali Allawi, who participated in the meetings of the Democratic Principles and Procedures Working Group (DPPWG)\(^{17}\) of the FoIS, argued that even though the idea of de-Ba’thification emerged in 1990s among the intellectual circles, this meeting was the first official arena where de-Ba’thification was discussed in-depth, along with its predecessor de-Nazification (interview with Ali Allawi May 21, 2010). However, as the ORHA historian Gordon W. Rudd observes, the DoS was not fully involved in this project and the outcome of this study lacked a coherent plan (Rudd 2011, 392). As a result, this study was never used as a guide; many U.S. officials who worked in the field after the invasion did not even know that such a study existed.

Meanwhile, the Pentagon focused on its own projects. The Office of Special Plans (OSP) under the supervision of the Under Secretary of Defense for Policy, Douglas J. Feith, was formed. The CPA official, who also worked at the OSP, recollected that the

\(^{17}\) There were “17 working groups that strategized on topics including the following: public health and humanitarian needs, transparency and anti-corruption, oil and energy, defense policy and institutions, transitional justice, democratic principles and procedures, local government, civil society capacity building, education, free media, water, agriculture and environment and economy and infrastructure.” The Democratic Principles and Procedures Working Group was one of these 17 working groups. http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB198/index.htm
right after the OSP was formed, the staff started working on a plan to purge the Ba’thists and to disband the army (interview with CPA official November 10, 2010). Paul Hughes, a retired U.S. Army Colonel and a senior staff officer of the ORHA and later the CPA, recalled how the OSP was working, “When I was in the Pentagon, I would see these guys who worked in the little planning cell [OSP] of Rumsfeld and Feith…I have to tell you it was like I had to give my first born up to prove to them my loyalty to the U.S. I mean they trusted nobody” (interview with Paul Hughes November 9, 2010).

Despite the fact that de-Ba’thification was first discussed and structured under the DoS-sponsored process, it received more support from the Pentagon and Vice President Dick Cheney’s office than even from the DoS itself. Undersecretary Feith argued that removing Ba’thists from key positions after a thirty-year Ba’th rule and empowering Iraqis in this process was necessary, despite the criticisms of the DoS, especially from Richard Armitage and Colin Powell (interview with Douglas Feith November 29, 2010). He explained, “I could not imagine General Dwight Eisenhower thinking he would liberate Germany without abolishing the Nazi political apparatus” (Feith 2008, 419).

In December 2002, Feith’s office took the first step to show the DoS that DoD had all it took to win this turf battle. His office drafted a proposal, which was later known as the NSPD 24; Rumsfeld presented it to the President and persuaded the President to sign it. This still-classified directive handed the control of postwar Iraq to the DoD and allegedly presented the plans for post-conflict stabilization including de-Ba’thification. The Pentagon’s hawkish neo-con agenda won over the moderate DoS agenda (interview with Laith Kubba October 10, 2012). As Lawrence Wilkerson, chief of staff to U.S.
Secretary of State Colin Powell argued, “Vice President Dick Cheney and the Secretary of Defense Donald Rumsfeld conveyed the message that DoS was forbidden in the post-invasion process. It was the litmus test for the DoD. They also made it openly known that if you wanted to go to Iraq, you had to be a politically active Republican, who was dedicated to the Republican Party” (interview with Lawrence Wilkerson October 29, 2012).

The inter-agency fight did not end immediately. ORHA, the first organization that was responsible for the administration of Iraq, was formed as an inter-agency entity. The competition over the administrative posts within ORHA re-escalated the conflict between the DoS and the DoD. Furthermore, the impatience of the Pentagon and especially of Undersecretary Feith and his office to transfer authority over to the Iraqi authorities created some problems. Both Secretary of State Colin Powell and Deputy Secretary of State Richard Armitage declared their suspicions towards “externals” such as Ahmed Chalabi (Rudd 2011, 139). Even though Jay Garner, administrator of ORHA, did not take sides in this fighting, it was difficult for him to do his job under this pressure.

The hawkish neo-con agenda of the DoD was not implemented until the CPA, the successor of ORHA, was established. Under ORHA, de-Ba’thification was implemented without a policy. When Rumsfeld asked Garner how he would implement de-Ba’thification, Garner explained his approach as follows: “Well, the Kurds will take care of the bad ones in the north and the Shi’is will take care of the bad ones in the south. Those in Baghdad…[w]e know that in each ministry the Minister and the senior personnel manager are hard core Ba’thists. We will remove those and retain the rest to
keep the ministries operating” (cited in Rudd 2011, 146-7).

When Paul Bremer arrived in Baghdad to replace Jay Garner, he brought the de-Ba’thification order with him. Within four days, he assessed the decree with other CPA officials. However, the decision was not assessed with the ORHA officials who were already in the field working to reconstruct the Iraqi government before the CPA. Robin Raphel, a career diplomat and a senior advisor at ORHA, criticized the wording and format of the order (Rudd 2011, 311). She was also concerned that the implementation of this far-reaching order might have some disastrous consequences. Megan O’Sullivan, former staffer at the DoS and an advisor at both ORHA and CPA, explained how vetting managers in national government ministries and other state institutions could upset senior officials who had been working in the ministries as advisors, since they had been working closely with the managers in the ministries, who would most likely be purged with the order (Bremer and McConnell 2006). David Nummy, senior advisor at the Ministry of Finance, expressed the lack of collective discussion about the wisdom of de-Ba’thification by stating that the order was given to ORHA one day and announced the next day (interview with David Nummy November 18, 2010).

Due to the lack of communication and mass implementation, there was a huge amount of resistance after the order was circulated, especially in ministries because some ministries, that were already up and running, had to be reorganized. Hughes recalled the conversation between Jay Garner and Paul Bremer when Garner warned Bremer that the existing vetting system under ORHA was working well and taking this wholesale approach would ruin months of hard work (interview with Paul Hughes November 9,
In a PBS interview, Jay Garner stated that with the de-Ba‘thification order almost 50,000 Ba‘thists would be alienated and the goal to establish a functioning government could be ruined (PBS interview with Jay Garner August 11, 2006). He described the situation as follows: “You live in Boston. You take out the first three of four levels of government in Boston, see how well your electricity runs and how well the traffic lights work, and everything else goes” (PBS interview with Jay Garner August 11, 2006). This radical process also took weeks and months that could have been used to figure out how to speed up the process of establishing a new government in Iraq (PBS interview with Rajiv Chandrasekaran August 9, 2006).

In addition to ORHA officials, the CIA was against de-Ba‘thification. The chairman of the National Intelligence Council, Robert Hutchings was disturbed by the order and raised his concerns to Condoleezza Rice, US National Security Advisor, but the Pentagon blocked any effort to reevaluate the order (Ferguson 2008, 154). In the meeting right before Paul Bremer signed the de-Ba‘thification order, Jay Garner and the CIA station chief, Charlie Sidell, warned Paul Bremer about the possible horrendous outcomes of de-Ba‘thification. Sidell explained that the order could take 30,000 to 50,000 well-connected and powerful Ba‘thists underground before nightfall. Despite these concerns and criticisms, Bremer insisted that he was ordered to execute de-Ba‘thification (cited in Woodward 2006, 194).

The de-Ba‘thification order undeniably helped CPA Administrator Bremer make a major impact upon his arrival and establish his leadership in Iraq (Rudd 2011, 308). Yet, it was not the only tool. A week after he announced the de-Ba‘thification order, he
signed CPA’s Order #2 that dissolved several entities along with the army. Even though the initial project was to keep the army with purged leadership to assist occupied forces to maintain and secure order as a national reconstruction force during the transition, it never happened (Powell and Persico 2011, 516; Powell 2012, 214). Condoleezza Rice, US National Security Advisor, explained in her memoir that dissolution of the army was a surprise,

…the Pentagon was aware of Jerry’s [Bremer] intentions to issue an order dissolving Iraqi security organization, including the army, as a part of the de-Ba’athification effort. Don [Rumsfeld] received a memorandum to this effect on May 19, but he did not bring it to my attention or that of the President. Jerry has said he raised the issue at the NSC [National Security Council] on May 22. Several participants remember that it was brought up only in general terms during a discussion of de-Ba’athification. It was certainly not a request for permission to issue the order…I was surprised when I read in the newspaper on May 24 that the Iraqi military had been dissolved by order of the US envoy (Rice 2001, 238).

Both Paul Bremer and Walter Slocombe, CPA senior advisor for Security and Defense, argued that no one dissolved the army, but instead the army had been dissolved by itself. However Paul Hughes rejected this claim by explaining that he and his team were working with army officials on the ground, and negotiating with them over their salaries. Hughes also clarified that these army officials had “no allegiance to Baath party and no allegiance to Saddam; they wanted to ensure their survival” and were willing to work with the occupying forces (interview with Paul Hughes November 9, 2010). According to Rudd, “there was little question that the Republican Guards and those intelligence agencies intensely loyal to Saddam Hussein, guilty of many atrocities, would have to be disbanded. But the regular army was one of the few national institutions that still had the respect of most Iraqis” (2011, 317). These two orders that Colin Powell
refers to as the “two original sins of the occupation,” launched the official purging process in Iraq.

4.4 Literature on Rationales for Disqualification

Before engaging in an in-depth analysis of de-Ba’thification rationales, this section details the existing literature on the rationales for disqualification efforts including purging, vetting, and mainly lustration. This literature survey helps to uncover some of the existing rationales that might have been used by the designers and engineers of de-Ba’thification. It is also useful in order to present where my analysis fits with in the existing literature.

As stated in Chapter 2, in this study, I argue that there can be numerous rationales presented for purging. These rationales can vary across different stakeholders and can be interpreted differently depending on how the idea is sold to the general public. Especially under occupation, rationales can be contested and can create problems that eventually affect the design and implementation of the disqualification effort. Although it is explained in different sources that all disqualification efforts are implemented with different, various, and opposing rationales, consolidation of democracy stands as one of the most discussed rationales of the literature. According to Maria Łoś (1995), this global, ideological, and political debate has two main strains: dystopian and affirmative. Dystopian discourse paints a frightful picture of a lustrated society, and lustration may ruin the chance of any democratic evolution. In this discourse, lustration is given names such as hell, chaos, evil, (witch) hunt, absurd, surreal, Kafkaesque, and recommunization. Affirmative discourse asserts the need for lustration in order to have a successful
transition to democracy. In a Polish context, she links the dystopian discourse with the left-wing political affiliation and the affirmative one with the right-wing orientation. This debate is particularly enlightening for the design and implementation of lustration processes. In this section, I present this debate as well as some of the case studies conducted with the purpose of identifying specific rationales for lustration.

In his typology, Claus Offe eloquently summarizes existing justifications for disqualifications (1993, 28). He explains that there are two types of justifications: backward-looking and forward-looking. The former category includes moral cleansing to wash away the legacies of the former regime, punishment of the old regime collaborators, compensating victims, and establishing truth about past (Posner and Vermeule 2004; Stan 2012, 291). The forward-looking category consists of ensuring that the legacy of the past does not disrupt democracy. In this category, the institutions and the individuals working within them are perceived as a possible threat to a properly functioning new democracy. Therefore, institutions should be reformed and individuals working within them should be excluded in order to transform the political culture, prevent corruption, build trust, establish security, and to have a functioning democracy. Teitel argues that “[i]n their backward-looking features, these responses [the administrative responses like lustration] resemble criminal justice; whereas in their forward-looking features, the measures are sweeping attempts to shape the political community, institutions, and processes, and in this way administrative justice resembles constitutional measures” (2000, 150). In any case, the disqualification programs can include both forward- and backward-looking justifications.
The most influential study that was conducted with the purpose of identifying the unique rationales for Polish lustration law is the empirical investigation by Maria Łoś. She identifies three affirmative lustration debates in the Polish Senate that were used to justify lustration: establishing historical truth and clarifying issues of moral and political responsibility, ensuring minimal justice by barring politicians who have been accused of committing crimes, and providing national security and public safety (Łoś 1995, 143-45). Building on these findings, Roman David conducted an empirical study on the aims of both Polish and Czechoslovakian lustration laws in 2003. He analyzed the laws, constitutional reviews, parliamentary debates, reports, political statements, country reports, newspapers, magazines and previously conducted opinion polls. David confirms the rationales that are identified by Łoś and provides new ones: the protection of rights and the need to regulate the process by law, territorial integrity, and trust (2003, 392). He also argues that lustration is “a response to the long-term needs of societies with totalitarian experience that have to transform their political culture, come to terms with their past, and secure a reliable state apparatus in the pursuit of democracy” (David 2003, 407). Even though he does not think that the lustration law by itself is enough to neutralize old power networks and consolidate democracy, it may contribute to the pursuit of these aims (David 2003, 431).

In another effort to present justifications for lustration in the Czech Republic, Hungary, and Poland, Williams et al. argue that “the ardent supporters justify lustration through the democracy discourse” (2005, 28). They present three lines of argument that these politicians use to sell lustration: *Prophylactic arguments, Blackmail arguments, and*
Public empowerment arguments. Prophylactic arguments purport that the new democracy is extremely fragile, so it has to be protected from the covert continuation of old networks and their negative effect on the state and democracy. Many scholars who study lustrations support this argument. For instance, Letki maintains that lustration deals with the problem of corrupt social capital, such as “the networks of nomenclature members interested in maintaining social status and material wealth gained under the old regime” (2002, 540). Other scholars of the field argue that due to the previously earned positions of power, prosperity, and connections, nomenklatura can easily make money in private business, protect their power, use their wealth to regain political influence, and ultimately disrupt democracy (Schwartz 1994, 144; Weigel 2001, 35; David 2004, 789). Given that, lustration can be justified to break any power conversion process (Franklin 1991; Bertschi 1995, Letki 2002, David 2004, Safjan 2007). Moreover, after peacefully negotiated transitions, many old elites continue to enjoy high positions of power under the new regime (Horne 2005, 3-4). These experienced and organized elites might try to undermine the new democracy. Under these circumstances, a legalized and regulated vetting process becomes the most useful tool to safeguard the democracy and promote good governance (Horne 2005, 3-4). Szczerbiak’s article, in which he examines how the issue of lustration has been handled in post-communist Poland, explains that lustration was instrumentalized by the Polish right as part of the political power struggle and that they justified it by pointing out the possibility of the communist resurrection (2002, 570).

Based on the blackmail argument, since many classified communist security-service files have been destroyed or stolen during the transition processes, as in
Czechoslovakia, Hungary and Poland, those who allegedly had past association with the security service are open to blackmail. Along the same lines, Horne and Levi note that lustration is important for the protection of former regime collaborators who now want to help develop a democratic order (2004, 58). Despite being the supporters of democracy, these former collaborators might be perceived as a danger to the creation of a new democratic system by former dissidents. Therefore, lustration protects these former collaborators from being blackmailed (Offe 1992; Kaminski and Nalepa 2004; in Hungary Barrett et al. 2007; Czarnota 2007). Even though this may sound very naïve, street justice or spontaneous punishment of the collaborators were very well-known incidents in post-Nazi Europe (Huyse 1995). Herbert Lottman (1986), who published the invaluable analysis of the épuration process in France after World War II, describes horrendous acts of vigilante justice. He explains that many people were tortured and lynched in the streets; female prostitutes who had sexual relationships with Nazis were publicly humiliated by having their hair shorn off and their heads shaved (1986, 66-67).

Based on the public empowerment argument, through lustration, public institutions become more transparent, and consequently, lustration will empower citizens, and increase public confidence and trust in the new political institutions. Similarly, Czarnota explains that in the Polish context, it is believed that lustration would “guarantee a minimum level of civility in political discourse,” and “provide citizens with the necessary information to make informed political choices” (2007, 232). Horne and Levi explain that trust is an important component for a democratic state, because it determines the citizens’ willingness to comply with the government (2004, 57).
Re-peopling institutions with new faces, however, is not enough to establish trust between individuals and public institutions (de Greiff 2012, 46-7). In the long-run, lustration should aim to demonstrate commitment to systemic norms governing employee hiring and retention, disciplinary oversight, prevention of cronyism and so on (de Greiff 2012, 46-7). According to de Greiff, “civic trust” can exist not only between citizens and public institutions, but also between individuals who are members of the same political community (2007, 532). Horne argues that interpersonal trust can be possible through vetting (2005, 40-42). First, when the cycles of distrust are broken with the personnel change, citizens will find themselves in a new environment where trust is possible (Horne 2005, 41). It is impossible to expect interpersonal trust in the absence of a symbolic and material break from the past. As Minow argues, “[t]he continued presence and exercise of power by people who participated in the regime atrocity\textsuperscript{18} ironically provides both constant reminders and routinized forgetting of what happened” (1998, 136). Second, citizens’ attention will be channeled towards a common goal of political reform through vetting (Horne 2005, 41). Thus, a shared interest can enable interpersonal trust and create solidarity and national identity.

Nevertheless, for some, democracy cannot be consolidated through lustration because not only is the implementation of lustration undemocratic, but also the process itself is undemocratic as well. There are five major arguments in the literature that discuss the undemocratic character of lustration. First, lustration is based on the

\textsuperscript{18} She gives the example of Jeffery Benzien, the security police officer in South Africa who was well-known of being an inventor of a cruel and painful torture technique.
presumption of guilt rather than that of innocence (Bren 1993, 18; Calhoun 2002, 329; Rigby 2001; Grodsky 2011).

There were many incidents that had occurred in which innocent persons were caught in the lustration web and had subsequently tried to clear their names (Grodsky 2009). For instance, Czech dissident Jan Kavan who was accused of collaborating with the Czech secret police (StB), was lustrated from parliament. It took him five years to clear his name before becoming the country’s foreign minister. As Rigby explained the situation in post-Communist Europe: “[t]he onus was upon people to prove they did not work for the secret police or were not communist officials” (2001, 104). Conversely, as in the case of de-Nazification, those who were guilty could easily get away from punishment and keep their jobs, because they were deemed useful in the new struggle against Soviet danger (Kavan 2002, 30-1). Hence, “big fish” can easily escape from accountability; whereas, “small fry” suffer from public anger and state justice (Šiklová 1999; Rigby 2001; Kavan 2002).

Second, lustration is based on collective guilt rather than individual responsibility. Without determining individual responsibility for actions, lustration unjustly punishes individuals on the basis of association rather than actual guilt (Bren 1993; Cohen 1995; Nanda 1998; Šiklová 1999; Rigby 2001; Calhoun 2002; Boed 2002; Horne and Levi 2004; Sadurski 2005; Amstutz 2005). Lustrating people based not on what they did, but based on their beliefs and memberships, is unfair. Such a process cannot be anything more than a “witch-hunt” (Rosenberg 1995; Cohen 1995; Kavan 2002) even though it is known that the majority were involved in some sort of compromising activity or
complicity during the decades of authoritarian rule (Holmes 1995).

Third, even though the design and implementation varies across countries, lustration tends to undermine the fundamental right to due process as well as other individual liberties inherent in democracy. These rights include the right to work, to participate in public life, the freedom of expression and association, and freedom from discrimination (Offe 1993; Bren 1993; Schwartz 1994; Cohen 1995; Huyse 1995; Stinchcombe 1995; Ellis 1996; Nanda 1998; Teitel 2000; Rigby 2001; Boed 2002; Horne and Levi 2004; Amstutz 2005; Ratner et al. 2009). The supporters of lustration however do not accept this criticism because lustration is not a punishment or a trial. It lasts for a short period of time and there are no criminal sanctions (Rosenberg 1995, 99). People who are lustrated can work in the private sector, and in some situations they can occupy lower-level public posts. Due process guarantees do nothing but slow down the implementation of lustration. Hence, they are unnecessary (Rosenberg 1995, 99).

Fourth, lustration programs judge individuals’ past activities while relying on a single source, namely secret service files. Gathering information on guilt or innocence only from one source is problematic for many reasons. Opponents of lustration argue that these files are not reliable, veracious, accurate, or complete (Cepl 1992; Łoś 1995; Rosenberg 1995; Welsh 1996; Rigby 2001; Kavan 2002; Letki 2002; Williams et al. 2003; Kaminski and Nalepa 2004; Appel 2005; Sadurski 2005; Safjan 2007; David 2011). Letki argues, “the files are simultaneously ‘over-inclusive’, as not all people listed as agents or informers really collaborated, and ‘under-inclusive’, as the major agents were probably not listed” (2002, 542). It is not clear that citizens appear in these files just
because they were approached by the secret service or because they actually collaborated (Patterson 2011, 86). As Rosenberg explains, the StB employees in Czechoslovakia were under great pressure to expand their network of agents; the departments had to meet their agent quotas (1995, 87). Since the files did not require an agents’ signature or a verbal declaration of collaboration, secret service agents fabricated these files and recruited “dead souls” as the informers out of necessity and fear (Łoś 1995; Rosenberg 1995; Rigby 2001). Letki observes, “in Poland the number of registered collaborators rose each spring, just before calculating the quotas” (2002, 542). The files were also used to attribute information to an uncooperative candidate (Rosenberg 1995).

It is very incorrect to argue that many collaborated with the previous regime just for money or personal privileges, because there were many people who were coerced and even tortured to inform against their will under the communist rule (Appel 2005). Yet, some of the so-called collaborators had not been aware that they were being considered for recruitment (Cepl 1992, 25). Rosenberg narrates the painful story of Rudolf Zukal, a prominent dissident under the Czechoslovak Socialist Republic, who was fired from his academic post in Prague’s Economics University. He was forced to work as a bulldozer driver cleaning mud from lakes after refusing to sign a statement endorsing the 1968 Soviet invasion of Prague. He was elected to parliament after the collapse of the Communist regime and voted for a lustration bill without knowing that he will be listed as the Czechoslovakia’s 265th most dangerous man. The story was that an undercover StB agent befriended Zukal in Vienna, when he was on a nine-month fellowship during his academic years. Their conversations were recorded and Zukal was tagged as an informer...
in the files. He was later forced to step down from Parliament. Also, many of the files were destroyed or smuggled during the transition by secret service agents for political purposes (Łoś 1995; Kavan 2002; Letki 2002; Appel 2005; Sadurski 2005). Moreover, in some countries the secret service files were disclosed to the public, and this did not really help the problem of blackmailing of so-called collaborators. As Safjan explains, these actions violate the right to privacy, which guarantees the individual a right to freely dispose of information related to his past, and, therefore, harms the consolidation of democracy (2007, 12).

Fifth, the retroactive character of lustration undermines the process of democratic consolidation as well as a state’s commitment to the rule of law (Offe 1996; Minow 1998; Rigby 2001; Calhoun 2002; Aukerman 2002; Horne 2009b). According to Posner and Vermeule, ignoring statues of limitations and trying someone for a crime ex-post facto (i.e., after the fact), when the action was not a crime at the time it was committed amounts to procedural illegality (2004, 792). The people in question cannot know the consequences of what they were doing at the time of doing it (Offe 1993, 32). Thus, retroactive lustration puts the rule of law norms *nullum crimen sine lege* and *nulla poena sine lege* at stake (Posner and Vermeule 2004; Uzelac 2007). In many countries that have enacted lustration laws, such as Poland, Czech Republic, Slovakia and Romania, regional constitutional courts questioned the legality of the retroactive justice measures (Kritz 1994; Uzelac 2007). Further, retroactive justice measures negate the rule of law to

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19 *nullum crimen sine lege* means “no crime without law” and *nulla poena sine lege* means “no punishment without law.”
ensure justice for its citizenry and transparency in procedural law.

In addition to the undemocratic character of any lustration or purging processes, many ignore other factors in a post-conflict context that may help a country to democratize. Perry Biddiscombe (2007), in his book titled *The Denazification of Germany: A History 1945-1950*, argues that many think that de-Nazification democratized Germany in the long run, so de-Nazification must be a positive act. However, “this is a rather simplistic view of historical causation” (Biddiscombe 2007, 218). Developments in the 1950s and 1960s, namely the economic boom, the rise of consumer culture, the formation of the middle class, the abolishment of militarism, the change in the popular mood, which steered the rise of a more centrist Social Democratic Party of Germany (SPD), and the end of anti-communism led Germans to come to terms with the past (Biddiscombe 2007, 219). De-Nazification was just one of the many factors that promoted democracy in post-World War II Germany. Although the de-Nazification experience proved that purges alone cannot consolidate democracy in post-conflict countries, it seems that much of the lustration literature is built on this discourse. As Letki argues, although the relationship between lustration and democracy is not causal, the combination of lustration and democracy demonstrates that “all the lustrated countries fall into the category of ‘advanced democracies’, while all the countries that have not reached the level of ‘consolidated democracy’ are simultaneously the non-lustrated ones” (2002, 548).

The designers and implementers of the de-Ba’thification process utilized many of the rationales presented in this section to justify de-Ba’thification and sell it to the Iraqi
public. Yet, there are still other rationales exclusive to Iraqi context. The next section explores the rationales presented by the occupier (U.S. administration and its related departments) and Iraqi elites. It also uncovers what ordinary Iraqis expected from a de-Ba’thification process and how they interpreted some of the rationales presented to them.

4.5 Rationales for De-Ba’thification

This section describes and analyzes the rationales given by U.S. officials, Iraqi elites, and ordinary Iraqis for adopting de-Ba’thification. It should be noted that collecting data regarding the rationales of de-Ba’thification was challenging because the rationales presented below might have been different if this study were conducted before 2003. Hence, I present contradictions that exist similar to dystopian and affirmative discourses regarding some of the rationales, when necessary.

Also, one might ask that since U.S. officials and Iraqi elites were the designers and implementers of the process, why is there a need for understanding Iraqi public opinion? Identifying ordinary Iraqis’ perspectives was necessary to understand how the idea of de-Ba’thification was presented to the general public and to draw attention to how the designers and implementers of de-Ba’thification ignored the needs and expectations of the general public.

4.5.1 U.S. Administration

Understanding how the U.S. government set the objectives of de-Ba’thification cannot be separated from the infighting between the DoS and DoD. How each department understood and interpreted the idea of de-Ba’thification are polar opposites.
Since the DoD and close associates of Paul Bremer at the CPA were influential in the justification and implementation of de-Ba`thification, I uncover the rationales that they utilized to justify de-Ba`thification. I also unfold the criticisms that the DoS and some of the ORHA as well as CPA officials made to these rationales.

First, according to the DoD and some of the CPA officials, purging representatives of Saddam Hussein’s Ba`th party from the government and other seats of power was a necessary move to cleanse the system, to transform institutions in order to safeguard democratic transition, and to prevent future human rights abuses. Undersecretary Feith explicated, “Our principle was not to punish the perpetrators but to lay the foundation for new and humane government” (interview with Douglas Feith November 29, 2010). According to Feith, there were no other options but to purge collaborators if the goal was to create a democratic government and the rationale of moving Iraq to a democratic direction could only be achieved through cleansing the institutions of the remnants of Ba`th party (interview with Douglas Feith November 29, 2010). This rationale was clearly explicit in every interview that I conducted with the civil servants of the DoD and the close advisors of Paul Bremer.

Walter Slocombe, senior advisor for Security and Defense to the CPA, argued that de-Ba’thification was “essential to changing the government and the society,” and explained that “part of changing the political system and trying to introduce a more open, more integrated, more democratic political system was to create political structures that would allow Iraqis to create political structures that we’re not simply dominated by the same people who were running the old party” (interview with Walter B. Slocombe
September 23, 2010). A career civil servant at the DoD, and CPA senior advisor for National Security Affairs, Frederick C. Smith, explained the necessity of purging after the change of regime with this analogy,

Cleaning the system is not unlike cleaning a corporation. If a new board of directors wants to take the company that has poor performance in a new direction, they will get rid of the CEO or the president and the couple of other people in the top levels, or for that matter, in a football team, the administration could get rid of the head coach in order to change the team (interview with Frederick C. Smith November 10, 2010).

Similarly, CPA official and the deputy to Paul Bremer, argued that people in the very senior level of power structure had to be removed from their positions for the sake of the broader effort to democratize and to alter the regime (interview with CPA official November 10, 2010). De-Ba’thification was also promoted within the U.S. government as a required tool to further U.S. interest in Iraq. Therefore, de-Ba’thification was not a choice, but a necessity and political reality.

The perception by U.S. government of de-Ba’thification as a vital mechanism for Iraqi democracy and the new political culture was the end result of the close relationship between the Iraqi opposition, especially Ahmed Chalabi, the DoD, and Vice President Cheney’s office. Scott Carpenter, the director of the governance group for the CPA and a senior advisor to Paul Bremer, argued that he was persuaded by the stories of individuals such as Mowaffak Al-Rubaie, Ali Allawi, Kanan Makiya, and many others who were looking for an opportunity to eradicate the fascist ideology or to seek revenge from Ba’thists (interview with Scott Carpenter October 27, 2010). Carpenter mentioned that
these stories proved that having Mazowiecki’s formula of the “thick line”\(^{20}\) was not the way to go in Iraq (interview with Scott Carpenter October 27, 2010). This close relationship between the Pentagon and the opposition figures of Iraq was a main reason for infighting within the U.S. government. Paul Hughes, senior staff officer of ORHA and CPA, argued that “without really examining why they were expatriates to begin with and what the real motivations they might have for the U.S. to invade Iraq, we put way too much trust in them—Ahmed Chalabi and many others” (interview with Paul Hughes November 9, 2010).

Instead of communicating with or inquiring of Iraqi society about the desirability of de-Ba’thification, the CPA and DoD generalized that the demands of Iraqi expatriates reflected the perspective of the general Iraqi population. For the U.S. government, statements of Iraqi elites who lived outside of Iraq during the brutal times of Ba’th party were enough to understand Iraqi public opinion. For instance, Sermid Al-Sarraf, a member of the board of directors at Iraqi Jurists’ Association, declared in a Senate hearing that “…most Iraqis are more than happy and willing to participate and take the lead in the de-Ba’athification process. The Iraqi people do not need to be convinced about the evils of the prior regime. They know it, they lived it, and many died because of

\(^{20}\) The first non-communist Prime Minister of Poland Tadeusz Mazowiecki used the term “policy of the thick line” in his first parliamentary speech in order to explain what the attitude towards communists and people of the former regime should be. He believed that there should be a thick line drawn between the past and the present. This policy suggested that no matter what one’s position in the communist system had been, one should be allowed to participate post-communist social and political system. The competence and loyalty toward the new government should be the only criteria for vetting public officials. Many people criticized him because of his non-punitive policy.
it” (U.S. Senate 6/25/2003, 29). The U.S. Senate listened only to these elitist perspectives in order to grasp public opinion regarding de-Ba`thification, thereby failing in their goal.

Although my interviews with ordinary Iraqis showed that the perspectives of exiled Iraqis and Iraqi elite did not reflect those of the general public, the key assumption that the U.S. government had was that “we initiated de-Ba`thification because this was what the majority of Iraqi people wanted” (interview with Frederick C. Smith November 10, 2010). This was the second rationale that was uncovered. When I asked Paul Bremer if he consulted with Iraqis about the desirability of de-Ba`thification, he said yes. The Iraqis that he consulted with were nobody but his G7 Council,21 composed solely of ethnic and religious leaders. Paul Bremer admitted that he did not get a chance to consult with ordinary Iraqis who lived under Saddam Hussein’s tyranny. Like many U.S. officials, he did not leave the green zone often and separated himself from the public. As of the time of our interview, he believed that de-Ba`thification was the most popular thing that the CPA did because it was the result of the opinion polls that the CPA started conducting five months after the de-Ba`thification decree was announced. As Bremer argued,

During my time in Iraq, Iraqi citizens from all over the country, from every sect, religion and ethnic group, repeatedly praised the de-Baathification and disbanding of Saddam’s security forces as the Coalition’s most praiseworthy decisions. An opinion poll in early July 2003 revealed that over 94% of Iraqis agreed that top Baathists should not be allowed in government (Bremer 2005).

21 G7 Council consisted of Jalal Talabani (Kurdish), Massoud Barzani (Kurdish), Ahmed Chalabi (Shi`i), Ayad Allawi (Shi`i), Ibrahim Al-Ja`fari (Shi`i), Abdul Aziz Hakim (Shi`i), and Nasser Chadirchi (Sunni).
These opinion polls were conducted well after the decree was issued and de-Ba’thification was underway, therefore, it is incorrect to argue that de-Ba’thification was issued because Iraqis wanted it or that it incorporated the opinions of Iraqi public and thus had public legitimacy.

The extensive interviews and surveys\(^{22}\) with the Iraqi population conducted by a team of researchers from ICTJ and the HRC at the University of California, Berkeley during 2003\(^{23}\) presented a comprehensive and a nuanced portrait of Iraqi perspectives on the issues of transitional justice such as de-Ba’thification (ICTJ & HRC 2004, i). Many of the findings showed that the de-Ba’thification program that the CPA initiated did not include the real expectations of Iraqis into the equation. For instance, some participants were concerned that “blanket ‘deba’athification’ would deprive Iraq of crucial human resources needed to rebuild its state and society” (ICTJ & HRC 2004, 37). And, several participants criticized “the imprudence of disbanding the army.” One of the respondents, a Sunni man from Mosul, criticized the second order: “Paul Bremer is the most ignorant man. He was brought to Iraq. They should have brought scholars. Upon his arrival, he dismissed the Ba’ath people, the ministry of information, and the army, although he could have benefited by their experiences” (cited in ICTJ & HRC 2004, 37). Despite

\(^{22}\) “In total, 395 people were surveyed, through 38 key respondent interviews and 49 focus group discussions, conducted between July 18 and August 13, 2003.” http://www.law.berkeley.edu/HRCweb/pdfs/Iraqi_voices.pdf

\(^{23}\) This project led to a report titled “Iraqi Voices: Attitudes toward Transitional Justice and Social Reconstruction.” http://www.law.berkeley.edu/HRCweb/pdfs/Iraqi_voices.pdf
these criticisms, some of the respondents, especially those living in Kurdish regions, liked the idea of de-Ba`thification, as Bremer and his team assumed.

In addition to the so-called popularity of the de-Ba`thification decree, the third rationale that came out from the CPA and the DoD discourse was that de-Ba`thification was a good method to encourage Iraqis to cooperate with the CPA (interview with Frederick C. Smith November 10, 2010; interview with Douglas Feith November 29, 2010). Feith explained, “if they [Iraqis] doubt that Ba`thists cannot come back, they would not have been the supporters of CPA” (interview with Douglas Feith November 29, 2010).

According to Michael Rubin, CPA advisor, building trust between the Iraqi public and the CPA was difficult for several reasons. First, there was a fear among Iraqis that the U.S. might abandon them again like they did in the aftermath of the 1991 uprisings (Rubin 2004). When the U.S. government backed up Iraqis to revolt against the government after the Gulf War, they decided not to support them without any forewarning and, therefore, thousands of Iraqis were killed and buried in mass graves while millions of others became refugees in neighboring countries. Second, after the invasion of Iraq, the U.S. was sending mixed messages to Iraqis. Iraqis believed in the U.S. effort to bring freedom, peace and democracy, but pursuing these goals while having Ba`thists holding positions of responsibility, produced massive mistrust with regard to the real intentions of the U.S. (Rubin 2004). Iraqis were expecting some sort of a transitional justice mechanism that could protect them (interview with Raid Juhi Al-Saedi June 11, 2010). Third, U.S. officials were personally meeting with Ba`thists in order to
get their views about the future of Iraq and to initiate a reconciliation process. For instance, “frequent meetings between… Garner and Saad al-Janabi, a close associate of Saddam Hussein’s son-in-law Hussein Kamal, …fueled Iraqi speculation that the U.S. was not willing to adhere to its promises” (Rubin 2004). Scott Carpenter accepts that the Coalition fueled this paranoia, which still exists in Iraq (interview with Scott Carpenter October 27, 2010). Lastly, because the Coalition Forces were unsuccessful in capturing Saddam Hussein immediately after the invasion, many were still afraid that Ba’th would come back. Bremer explained the situation,

I would obviously much prefer that we had clear evidence that Saddam is dead or that we had him alive in our custody. I think it does make a difference, because it allows the Ba’athists to go around in the bazaars and in the villages, as they are doing, saying, “Saddam is alive, and he’s going to come back. And we’re going to come back.” And the effect of that is to make it more difficult for people who are afraid of the Ba'athists—and that's just about everybody—it makes it more difficult for them to come forward and cooperate with us, because they are afraid the Ba’athists may return. We have to show through our de-Ba’athification policy…that in fact the Ba'athists are finished; they’re not coming back (DoD, 7/24/2003, 8).

Along the same lines, Walter Slocombe furthered this prophylactic line of argument,

…at the beginning of the occupation, it was important to establish that the old elite that had run the system for Saddam was not coming back. We had to do that in order to establish the kind of confidence to get people to work for a new Iraq and in a new political system…at the time, it was very important to break this idea that “Americans are not going to stay long and when they leave Saddam will come back.” That was a very important message to get across at the beginning (interview with Walter B. Slocombe September 23, 2010).

Therefore, it was thought that de-Ba’thification was the right move to gain the trust and confidence of Iraqis in U.S. leadership. By assuring Iraqis that Ba’thists are not allowed to come back in the system, the CPA wanted to recruit Iraqis to the U.S. agenda.

The fourth rationale was that this symbolic and popular policy aimed to balance
the interests of the Kurds and Shi`is because if there was going to be an open democratic political system, the power had to be distributed evenly rather than keeping it in the hands of Sunnis, who made up only 20% of the general population (interview with Walter B. Slocombe September 23, 2010). One of the CPA officials I interviewed also accepted this rationale by stressing the fact that the CPA used de-Ba`thification especially to gain the trust and political support and to balance the interests of Kurds and Shi`is who suffered under Saddam Hussein’s Sunni-dominated power structure (interview with CPA official November 10, 2010).

The rationale of gaining the trust of Shi`i and Kurdish populations was also evident in the decision to dissolve the army. Although Walter Slocombe mentioned that the army dissolved itself before the second order was issued, he accepted the importance of gaining the trust of Kurds and Shi`is. He explained, “...the army was an immensely a political element in the old system. It is true that the old army was not fully a Ba`thist institution; that it was not fully trusted by Saddam. But it is also true that it was very much a Sunni institution, and Sunni institutions were not trusted by the Kurds or the Shia” (interview with Walter B. Slocombe September 23, 2010).

The CPA needed the Shi`i political support and according to Dan Senor, chief spokesman and the advisor for the CPA, the Shi`i could have been a major problem for the CPA because of the way they mobilized and used violence against Americans (Anderson 2004). This was thought to be especially important because Shi`i clerics such as Mohammad Bakr al-Hakim were calling for a resistance against occupiers in order to gain political power. Thus, the U.S. government tagged Sunnis as bad guys like Germans
in post-World War II Germany and portrayed Shi’is, as well as Kurds, as the victims like Jews (Rosen 2010, 20). Even though Sunnis were disproportionately represented in the party’s upper ranks and the leadership structures of military and the security services (interview with Feaz Ahmed October 11, 2012), the Ba‘th party had considerable amount of Shi‘i, Christian, and Kurdish members. Therefore, the party and institutions such as the army were wrongly categorized as exclusively Sunni.

Transforming institutions in order to safeguard the democratic transition and prevent future human rights abuses, issuing a popular decree, encouraging Iraqis to cooperate with the CPA, and having a more inclusive power structure that respected the needs of Kurds and Shi‘is were the major themes that emerged during my interviews with CPA and DoD officials. However, the DoS and some of the ORHA officials claimed that these goals couldn’t be achieved through extensive de-Ba‘thification strategy. Many ORHA officials believed that de-Ba‘thification and de-militarization of Iraq isolated and criminalized former Ba‘thists who were willing to work with the Coalition Forces. Iraqis were already cooperating with the Coalition and these consequent orders only created anger and resentment (interview with Paul Hughes November 9, 2010). Moreover, the DoS was concerned that the wholesale de-Ba‘thification could eliminate the Iraqis who were needed to run the system and to protect it against an Islamist takeover (Allawi 2007).

In addition to these rationales, my in-depth interviews revealed a fear that was shared by many U.S. officials. When the insurgency erupted after the de-Ba‘thification order was issued, many senior U.S. officials disclosed that there was a fear of Ba‘thist
renewal. Donald Rumsfeld, Condoleezza Rice, and many right-wing players in the media began comparing the Werwolf movement that the Allied Forces faced before the defeat of the Nazi regime in Germany with the Iraqi insurgency. However, there are major differences between Nazi Werwolves and Iraqi insurgents. According to Perry Biddiscombe, a historian whose works on the Werwolf movement inspired the U.S. policy-makers and made them fear similar guerilla-type resistance, comparing Nazi Werwolves with Iraqi insurgents is problematic (Biddiscombe 2004). The position of the Allied Forces in Germany was as a conqueror, rather than a liberator/occupier, as in Iraq. Furthermore, the span and size of the resistance movements were substantially different. In Germany, the movement allegedly consisted of a few thousand trained guerillas with a large number of civilians who had organized as a commando force before the defeat of Nazis, whereas in Iraq, the resistance gained its power when Saddam Hussein and his close circle successfully went underground for some time after the invasion (Biddiscombe 2004). Since the leadership of the party was still alive, many former Ba’thists were actively involved in insurgency with the hope of a possible Ba’thist revival.

Given these differences, the comparison might be challenging. Yet, the immediate citation of the Werwolf movement proved the existing fear among U.S. officialdom. This was the fifth substantial concern that justified the policy of de-Ba’thification in the minds of the U.S. administration. According to Walter Slocombe,

Saddam was evil but not stupid and he realized that trying to put up a conventional defense against Americans had not worked very well in 1991, and so he made a conscious decision to plan for something like the Werwolf movement in Nazi Germany at the end of the war. Instead of trying to beat the
American army in the field, the strategy would be to wait and mount an irregular, guerrilla type campaign—a strategy based in part on the notion that the Americans did not intend to stay very long anyway. To me, all analogies are dangerous, and I know that Werwolf movement had not really existed... But in Iraqi case, I think it is likely—and there is some direct evidence as far as I understood it—that in fact there was a conscious plan... for what they called a resistance movement to stay behind... and I think it is certainly the case the initial insurgency—whether pre-planned or not—was based on the Ba’th party structure (interview with Walter B. Slocombe September 23, 2010).

There was also some speculation that Saddam Hussein studied the Nazi case and further ordered top Ba’thists to study Hitler’s Mein Kampf (Bremer and McConnell 2006). Given this information, expecting a conscious resistance plan based on the party structure was reasonable for the U.S. administration. The attempt to eliminate the Ba’th party from the Iraqi political system could then be accepted as the fear of a potential Ba’thist revival. Yet, others argued that de-Ba’thification itself drove Ba’thists underground rather than having them controlled to eliminate any guerrilla struggle.

The Ba’thist revival in the 1970s and 1991 also fueled fears as well. Walter Slocombe explained, “Saddam came back in 1991 after being totally defeated and [had] come back in 70s after being [put] in jail by communists... I think people in the Ba’th party and people in insurgency expected that they could mount this insurgency, this resistance. The Americans will be tired and go home... Shia would give up...” (interview with Walter B. Slocombe September 23, 2010). Besides, the inability of the Coalition Forces to capture Saddam Hussein immediately after the invasion, and his effort to keep Ba’thists organized from underground amplified this fear. Furthermore, the emergence of neo-Ba’thist organizations such as the Association of Muslim Scholars was effective in the consolidation of this fear. The Association of Muslim Scholars was formed by
religious leaders a couple of days after the invasion to protect Sunni interests and controlled much of the insurgency (Rosen 2010, 41)

Hence, de-Ba’thification was employed as a mechanism for preventing a Ba’thist awakening and securing the U.S. triumph in Iraq. The chief investigative judge of the Iraqi High Tribunal, Raid Juhi Al-Saedi, who was purged under the de-Ba’thification law, pointed out that it was the Coalition Forces strategy to show Iraqis and the whole world that they defeated the old regime, and that they were ready to create a new one (interview with Raid Juhi Al-Saedi June 11, 2010).

In short, this research revealed five major rationales developed by U.S. officialdom, including: transforming institutions in order to safeguard democratic transition, satisfying the expectations of Iraqi public through a popular policy, gaining the Iraqi support and trust for U.S. leadership, balancing the interests of Kurds and Shi’is against Sunnis, and preventing a possible Ba’thist revival.

4.5.2 Iraqi Elite: The Architects and Directors of De-Ba’thification

This section describes the rationales of the Iraqi elites actively involved in the decision-making and/or implementation of de-Ba’thification. These elites include: the participants in the Future of Iraq Study (FoIS), the members of Iraqi Governing Council (IGC), Higher National De-Ba’thification Commission (HNDBC), Accountability and Justice Commission (AJC) and the officials in post invasion ministries.

The FoIS participants discussed many transitional justice mechanisms and their possible application in Iraq. The proceedings of the FoIS show that lustration in Czechoslovakia and de-Nazification in Germany were some of the most utilized
examples of transitional justice mechanisms. Rend Al-Rahim Francke, an Iraqi political
activist and participant in the FoIS recollected how the idea of de-Ba’thification was
discussed and came into being,

There were some Iraqis who say that “Ba’thism is like Nazism and it was as
destructive to the society and soul of a nation as Nazism was” and others were
less extreme…There were a few people in the opposition prior to 2003 who
protected Ba’thism. They said it was Saddam not Ba’thism to be punished;
Saddam ruled the country not the party… They did not like the term de-
Ba’thification …During the FoIS, de-Ba’thification was discussed in Transitional
Justice and Democratic Principles and Procedures Working Groups. I remember
long discussions about de-Ba’thification. There were three positions: some
wanted de-Ba’thification from the roots [hardliners], others argued for from the
top de-Ba’thification [only purging those who were in the top levels of the Ba’th
party hierarchy] and others said Ba’th party should not be penalized…
“hardliners” who wanted deep uprooting…carried the day. It was very easy to
take absolute positions when you were in opposition and in exile. Some thought
that Ba’th was intrinsically destructive so de-Ba’thification should go deeper and
there were people who said it was Saddam. Bremer was influenced by the
hardliners so anybody who was connected to Ba’th had to go (interview with
Rend Al-Rahim Francke September 7, 2011).

Therefore, throughout discussions in both the Transitional Justice Working Group
(TJWG)\(^{24}\) and DPPWG, many Iraqi experts, professionals and intellectuals considered
de-Ba’thification as a valid transitional justice mechanism for Iraq. The only issue was
scope.

The TJWG participants said that banning the Ba’th party was a symbolic step
towards setting up a new vision and achieving the democratic transition for Iraq (TJWG
meeting notes 2003). Since the meetings of the FoIS were conducted before the Iraq war,
many participants were considering the worst-case scenario. If the new system couldn’t

\(^{24}\) Transitional Justice Working Group was one of the 17 working groups of the FoIS.
http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB198/index.htm
achieve its promises and if things went wrong under the new system, people would turn to Ba`th party. Hence, banning the Ba`th party under a careful de-Ba`thification process could secure the new regime and prevent a Ba`thist revival (TJWG, meeting notes 2003).

A group of participants in the DPPWG also noted that democratization, normalization and stability in the region could not be achieved if the entire apparatus of control and authority was not uprooted (DPPWG, Transition Task Force paper 2002). Laith Kubba, a participant in the FoIS and later the senior advisor to Iraqi PM al-Ja`fari, argued that “people who wanted it [de-Ba`thification] to happen were fearful that the Ba`th will have a come-back because those people [Ba`thists] were in power for 30 years, and they know how to take a moment and push back” (interview with Laith Kubba October 10, 2012). Similarly, Mowaffak Al-Rubaie, a member of IGC, senior security advisor of National Security Council, advisor to the AJC and a participant in the FoIS, explained that de-Ba`thification was necessary and it was “the best policy for the new order to protect itself against the coming back of neo-Ba`thism” (interview with Mowaffak Al-Rubaie August 25, 2010).

Ahmed Chalabi, a member of the IGC and the head of the de-Ba`thification commission, later advocated this rationale. In April 2003, he argued that the Ba`th party had a post-defeat strategy and that they would come back to disturb public security, prevent normalization and recruit Iraqis to their side. He argued that “[b]ringing predatory Ba`athists into government certainly will not bring stability. They are only interested in establishing their control again” (Middle East Quarterly interview with Ahmed Chalabi, 2004). According to Chalabi, to prevent this resurrection, the Ba`th
party had to be uprooted (Colvin 2003). Developments after the invasion, especially the inability of the Coalition Forces to capture Saddam Hussein immediately, strengthened this assumption. Entifadh Qanbar, Ahmed Chalabi’s long-time aide and the spokesman of the INC, explained that “A gentleman came to us and said his 12-year-old daughter has a teacher who's a Ba’thist…The teacher said, ‘Saddam was a good man. He's coming back, and you should kill Americans.’ This shows you that any remnant of the Baath is not acceptable” (cited in Goldberg 2003). Thus, securing the new regime from possible Ba’thist revival was the first rationale that was utilized by Iraqi elites.

The second rationale was bringing some sort of normalization and hopefully reconciliation through reintegrating Ba’thists into Iraqi society. The DPPWG participants considered the fact that de-Ba’thification should also define victimization at the hands of Ba’th, including Ba’th party members who were themselves victimized by the regime, in order to enable a process of restitution, rehabilitation, restoration, and reconciliation (DPPWG, final report 2002). Similarly, Mithal Al-Alusi, the General Director of Culture and Media at the HNDBC, explained that when he was working for the HNDBC he described and justified de-Ba’thification as a process of reconciliation and rehabilitation (interview with Mithal Al-Alusi December 16, 2010). Under the umbrella of HNDBC, he tried to provide an opportunity to Ba’thists and victims of Ba’th to come together and start communicating with each other in order to start a reconciliation process in Iraq. He also mentioned that he thought the goal of de-Ba’thification was to provide normalization and rehabilitation to Ba’th members and thus, successfully integrate them into society (interview with Mithal Al-Alusi December 16, 2010). Both Kanan Makiya and Ahmed
Chalabi mentioned the importance of normalization and reintegration of Ba’thists into a new Iraqi society. According to Kanan Makiya, de-Ba’thification aimed to provide a chance for Ba’thists to redeem themselves (The New York Times interview with Kanan Makiya October 7, 2007). Ahmed Chalabi stated that “we [HNDBC] wanted to isolate the overwhelming majority of the Ba’athists from the Ba’ath Party as a political organization in order that the majority would return to normal life and would play its [sic] role in the new regime and in destroying the Ba’ath organization” (Asharq Al-Awsat interview with Ahmed Chalabi September 16, 2007). Reintegrating former “collaborators” to the new system was a unique rationale that was not discussed in the literature.

The third rationale was discussed in the FoIS meetings. The TJWG participants were concerned with reforming the malicious education system of Ba’th, rebuilding an education system that provided an equal opportunity for all without considering party affiliation, establishing rigor and quality of academic training standards, and encouraging academic merit (TJWG, discussion paper 2003). The participants of the DPPWG also discussed the importance of the “de-ideologization” of Iraq through the de-Ba’thification process (DPPWG, final report 2002). They underscored the importance of setting up new curricula in schools and reforming the press, audiovisual media, the fine arts, and urban planning (DPPWG, final report 2002). They referenced the example of post-World War II Germany where the new government reviewed old textbooks, excluding the ones that contained propaganda promoting Nazism, hostility, and racism. Mowaffak Al-Rubaie argued that the most important idea behind de-Ba’thification was cleansing the country
from the fascist ideology and to de-Ba’thify the cruel ideas from education, culture, literature and all aspects of society. He believed that this was critical for the future of Iraq and even more important than the de-Ba’thification of individuals (interview with Mowaffak Al-Rubaie August 25, 2010). Rend Al-Rahim Francke also explained why the FoIS participants thought that the totalitarian Ba’thist ideology was dangerous and had to be vanquished,

the regime was intolerant, prone to violence, undemocratic, and corrupt. It was far worse than Arab nationalism. It was a totalitarian ideology. The Ba’th party controlled the whole society. The whole society was purely Ba’thi. Every single social unit has to be a part of the party. It completely denied the possibility of individuality and change. It was not just about having democracy and elections, but eliminating this ideology. That was what we were thinking (interview with Rend Al-Rahim Francke September 7, 2011).

The fourth rationale was to protect Ba’athists from possible anti-Ba’athist revenge. As discussed in the literature review section of this chapter, the idea was to protect Ba’thists from blackmail or possible vigilante justice. However, some of the Iraqi elite I interviewed were critical and admitted that they wanted to seek revenge and achieve political advantage in the new Iraq through the de-Ba’thification project.

As Ahmed Chalabi explained, “one of the primary purposes of de-Ba’athification is to have a systematic and legal process to deal with Ba’athists and to prevent people [anti-Ba’thists or victims of Ba’th party] from taking the law into their hands” (Middle East Quarterly interview with Ahmed Chalabi, 2004). It was a strategic discourse that assumed Iraqis who suffered from the actions of the Ba’th party and its functionaries might commit revenge killings and so de-Ba’thification was a necessary tool to prevent this vengeance. The HNDBC advisor agreed with Chalabi,
Just allow these people [Ba‘thists] go without any punishment? That means anybody can go, find the files, learn who denounced his father, brother, son, sister, and go shoot him. That is a logical thing. That happens when you do not offer people a mechanism. There are millions of people in Iraq who lost their loved ones, and who had vengeance against the Ba‘th. And Chalabi said this and he is right in this instance, “de-Ba‘thification saved tens of thousands of lives so as Ba‘thists.” Because it [de-Ba‘thification] has given the illusion that, they [Ba‘thists] were being punished for their roles…De-Ba‘thification saved Ba‘thist lives in terms of not having general revenge (interview with HNDBC advisor June 9, 2010).

However, some argued that rather than protecting Ba‘thist from revenge, people like Ahmed Chalabi wanted to seek personal revenge. Paul Hughes explained, “He [Ahmed Chalabi] was a small boy in 1958. His father was killed. After this incident, he fled with the survivors of his family and never returned to Iraq until 2003. His real motivation for coming back was to have the revenge of his family, because I think, he was blaming Saddam and Ba‘th party for his family’s demise” (interview with Paul Hughes November 9, 2010). Ali Allawi also explained that some opposition members, especially those who developed anti-Ba‘th ideology during the years of being suppressed by the party or forced to leave their home country, wanted to seek revenge through de-Ba‘thification (interview with Ali Allawi May 21, 2010). He acknowledged these people, including himself, were motivated by political advantage as well as retribution (interview with Ali Allawi May 21, 2010). Some of the participants in the FoIS that I interviewed also emphasized how some individuals or “hardliners,” as they called, aimed to gain political power and get their revenge through the de-Ba‘thification process. Feisal Amin Rasoul Istrabadi (Feisal Istrabadi), a professor at Indiana University and participant in the FoIS, argued that the perfect Arabic translation of de-Ba‘thification, *ijtithath al-Ba‘th* (uprooting the Ba‘th) spoke for itself, as it was aimed at more than ending employment
The developments after Bremer issued the de-Ba’thification order, especially the discussions surrounding the establishment of possible de-Ba’thification commission, set an example of political ambition and revenge. Important opposition figures such as Ali Feisal Al-Lami, Aqhil al-Mandalawi, Sheikh Haitham Al-Ansara, Abdel-Karim Mahoud al-Mohammedawi, and Jawad Al-Bolani along with Ahmed Chalabi met under the umbrella of the IGC for the purpose of establishing a de-Ba’thification commission (interview with HNDBC advisor June 9, 2010). The HNDBC advisor recollected that people who attended that meeting discussed what to do with a possible commission in the future and the ideas were having either a political party/institution or an intelligence agency (interview with HNDBC advisor June 9, 2010). The opposition groups thought de-Ba’thification would be the perfect instrument to achieve their political goals.

Almost a decade now after the initiation of de-Ba’thification, it is still being used by political figures as a political tool and an election strategy. As Nibras Kazimi explains in his blog, some of these political groups (especially referring to Iraqi National Alliance, a product of the SCIRI) create the image in the mind of the Iraqi voters that “if you do not vote for us, you vote for the return of the Ba’th.” He further explains, “They can’t run on integrity, since they were and are still part of a government accused of widespread corruption in the public mind, and they can’t run on efficiency, since they haven’t been able to deliver basic services. So they can only run against a boogie man: the Ba’ath” (Nibras Kazimi, Talisman Gate, comment posted January 20, 2010).

In addition to protecting Ba’thists from revenge, the last rationale that came out
during my interviews was establishing a meritocracy. Similar to the reintegration of Ba‘thists into Iraqi society rationale, meritocracy was not discussed in the literature. The argument was that Saddam Hussein had given key positions not based on merit, but based on loyalty. People working in the public sector were spying on their neighbors, writing reports about their loyalty to the party and government, and trying their best just to show their loyalty to Saddam Hussein and his regime. Entifadh Qanbar, Ahmed Chalabi’s long-time aide and the spokesperson of the INC, described Ba‘thists as “enslaving professional technocrats” (cited in Goldberg 2003). According to the Iraqi elites, people who had lined up for public sector jobs were not the most capable people of Iraq (interview with HNDBC advisor June 9, 2010), even though ordinary Iraqis I interviewed did not necessarily support this perspective. Some of the ordinary Iraqis discussed that Saddam Hussein had only selected people who were smart and the advancements of party rank, high salaries, promotions, and privileges were given to those who were perceived as being smart in the first place (interview with Mariam July 8, 2010).

The Iraqi elites wanted to change the power structure based on loyalty through de-Ba‘thification. One might argue that meritocracy is not compatible with the democracy rationale that was mainly discussed by the U.S. officials. Merit might be defined as intellectual and academic training or the length of education. Bovens and Wille (2009, 3) described meritocracy as a diplomatic democracy in which citizens with high levels of educational accomplishment have more political influence, so it basically means, “rule by the citizens with the highest degrees.” They also questioned the
contradiction of diplomatic democracy: “Isn’t democracy all about rule by the people, as opposed to rule by a well-educated or otherwise privileged elite?” (2009, 7) However, how Iraqi elites interpreted meritocracy was different. For instance, as explained in the FoIS Education Working Group report, meritocracy in academia meant that academic personnel and students cannot receive privileges because of their social qualifications, such as membership of a political party, relationship to a party of government leader, being an Arab national, membership of a particular family or tribe or a particular religion or a particular ethnicity (FoIS Education Working Group report, 2002).

Nonetheless, when I asked Iraqis who were directly and indirectly affected by the de-Ba’thification decree what they understood about establishing meritocracy in Iraq, they indicated that meritocracy was the mask of the Iraqi elite for political gain and a way of legitimizing the installation of the Iraqi elites who were not the real victims of the Ba’thist regime and who lived overseas and never returned to Iraq until 2003 (interview with Iraqi intellectual July 7, 2010; interview with Mariam July 8, 2010; interview with Monin July 12, 2010). Iraqis saw this as creating an elitist political structure, not a democracy.

The overall picture demonstrated that there were several rationales developed by Iraqi elites. Even though many agreed de-Ba’thification was a necessary tool, there was a divergent opinion with respect to the underlying principles of de-Ba’thification. Some claimed that de-Ba’thification was necessary to secure the new regime from a possible Ba’thist revival. Also, separating bad guys from good ones and shaming Ba’thists through de-Ba’thification project was necessary to bring normalization and to provide
rehabilitation for Ba’thists, which were crucial for long-term reconciliation. Yet many criticized de-Ba’thification for preventing reconciliation and political stability (interview with Ali Allawi May 21, 2010). According to others, de-Ba’thification was the perfect tool for cleansing Ba’thism from education, culture, literature and politics and seeking revenge of the past. Some Iraqi elites argued if there was no legitimate process to show the victims that Ba’thists are not a threat anymore, there would have been mass revenge killings. Finally, some thought there was a need to transform the employment system that had been based on cronyism and loyalty into one based on merit. For some, more than preventing mass revenge or establishing meritocracy, Iraqi elites were concerned about their personal revenge and political power.

4.5.3 Iraqi Public Opinion

Exploring how ordinary Iraqis interpreted and justified the rationales that were presented to them by the U.S. administration and Iraqi elites was a challenging process. First, there was no public opinion polling on de-Ba’thification before the process was initiated. Second, for some Iraqis, there were more important things to be concerned about than de-Ba’thification. Goldberg (2003) observed that the issues that Iraqis were dealing with included the lack of electricity and water. For many, or even most, these basic human needs were more important than the question of what to do with Ba’thists.

If there were victims of the Ba’th party who were concerned about what to do with Ba’thists and wanted to take their case to court and search for justice, they had no idea how to go about that process. The first time Iraqis learned about de-Ba’thification process was when the first issue of the Coalition newspaper, Al-Sabah, hit the
newsstands, almost four days after Bremer issued the order. As Mona Anis (2003) explained in her article in *Al-Ahram Weekly*, “Before that [the first issue of *Al-Sabah* covered de-Ba`thification issue], people had no way of knowing what this order entailed except by going to the Palestine Hotel.  

Marketing of de-Ba`thification was poor and, even today, some people still do not know about the de-Ba`thification process. Some ordinary Iraqis that I interviewed did not have a clue about the de-Ba`thification. To be sure, the majority of Iraqis that I interviewed were refugees, who might not have been aware of the process, as much as Iraqi citizens would have been who had stayed in Iraq. However, most of them still have families in Iraq, so some persons should have been aware of the process to some extent. Another reason for the lack of knowledge could be age. Some interviewees were teenagers or young children when the de-Ba`thification order was issued.

The interviewees who knew about de-Ba`thification and observed the process explained it very distinctively from one another. Some associated the term *ijtithath al-Ba`th* with Ahmed Chalabi and the new Iraqi politics. They mentioned that there was no real process of purging criminals because Iraq was under invasion and nothing was functioning properly. Moreover, the majority of Ba’thists who had money left the country for Syria, Jordan, or the UAE (interview with Abu-Munir March 16, 2011; interview with Feaz Ahmed October 11, 2012). They could not continue working in Iraq or living in

25 The order was posted in both English and Arabic on the outside wall of the Palestine Hotel.
their neighborhoods because people knew them (interview with Kurdish student July 6, 2010; interview with Monin July 12, 2010). Ali Daood, an Iraqi doctor, told the story of one of his relatives who was Ba’thist, “He went to Egypt and moved to the U.S. and some of their family members moved to Finland. Why? Because they have a lot of money and de-Ba’athification did not affect them” (interview with Ali Daood March 15, 2011).

According to some Iraqis, the rationale behind de-Ba’athification cannot be separated from Ahmed Chalabi’s political ambitions (interview with Iraqi intellectual July 7, 2010; interview with CPA translator October 17, 2010). Still others argued that it was implemented to protect the new political, economic and social system from Ba’thist revival, incorporate Ba’thists back into the society, cleanse the system from corrupt and criminal activities that were tolerated under the Ba’th regime, and comfort the victims of Ba’th party.

Many Iraqis believed in the Ba’thist revival, especially when it took occupying forces nine months to capture Saddam Hussein. This paranoia was very real because it was injected into the minds of Iraqis during the process of Ba’thification. Also, as an Iraqi student expressed, “it [de-Ba’thification] was an effort to make sure that Ba’thists will not come back to the system because Ba’thists gained a lot of experience on how to get back to the system in 60s and 70s” (interview with Mohammed Al-Hatem July 7, 2010). Ba’thists who were powerful and connected could reestablish the previous regime and commit the crimes that they used to engage in; given that, delegitimizing the previous regime and establishing a process of systematic eliminating its collaborators
were the foremost goals (interview with young Iraqi diplomat March 16, 2011).

However, most of the respondents who participated in the joint research of the ICTJ and HRC, including Kurds and Shi`is explained, “it was unfair to penalize individuals solely on the basis of their party membership, and believed that those who joined the party out of fear or in order to work should not be made to suffer for it” (ICTJ & HRC 2004, 35). According to most of these respondents, there was a difference between Ba’th party leadership or “Saddamis,” and Ba’th party members or “Ba’athis.”

Throughout my interviews, I also observed that even ardent supporters of de-Ba’thification took some time to explain this difference. “Saddamis” were mostly in the close circle of Saddam, and they had ordered or committed atrocities and crimes. However, “Ba’athis” were undereducated or desperate Iraqis who wanted to provide for their families and thus, followed the orders. They did not necessarily like Saddam Hussein and approve his policies. The general understanding was that many Ba’thists did not necessarily believe in the ideology or did not support Saddam Hussein and his policies. Therefore, with de-Ba’thification, the officials did not intend to eliminate, but to allow “Ba’athis” into the new social and political system. For instance, Al-Talibi, an Iraqi engineer, explained,

it [de-Ba’thification] is a chance for 7 million Ba’thi people (the majority of those people wanted to disconnect from the party and continue their life) to believe in the new Iraq… I believe that this order achieved this ideal. Now, thousands of Ba’thists are in the government, and they were incorporated into the society (interview with Al-Talibi March 16, 2011).

There was a clear support for the dismissal of Ba’th party members who participated in criminal and corrupt activities (also discussed in ICTJ & HRC 2004, 36).
Some of the Iraqis said that it was necessary to inform Iraqi citizens that notions such as criminality, corruption and madness were not tolerated anymore, and the notorious crimes of Ba’th were buried in the past (interview with young Iraqi diplomat March 16, 2011; interview with Al-Talibi March 16, 2011).

Some of the interviewees also argued that the de-Ba’thification process was a way to comfort the victims of Ba’th regime. Al-Talibi explained that some people had to pay for the crimes of the previous regime, mass graves and millions of missing people (interview with Al-Talibi March 16, 2011). It was essential to emotionally satisfy victims, acknowledge their suffering and to serve them with justice (interview with young Iraqi diplomat March 16, 2011). Therefore, the de-Ba’thification order aimed to root out senior Ba’thists who gave the directives, in order to provide justice for victims.

Even though it is beyond the scope of this dissertation to analyze Ba’thists’ perspectives in any depth, other scholars have begun to do so, including Victoria Fontan in her book entitled *Voices from Post-Saddam Iraq: Living with Terrorism, Insurgency, and New Forms of Tyranny*. She observed, the Ba’th party members themselves believed that the two orders that started the de-Ba’thification program in Iraq were just ad hoc responses to the increasing humiliation of the Coalition forces in front of the international community because of their in ability to end the search for weapons of mass destruction (Fontan 2009).

4.6 Conclusion

The main goal of this chapter was to investigate the rationales of U.S. officials and Iraqi elites for adopting de-Ba’thification, and the interpretations of these rationales
by ordinary Iraqis. This chapter also sought to describe the Ba’thification process of Iraq in order to draw attention to why de-Ba’thification was considered as a transitional justice mechanism in Iraq. Furthermore, this chapter laid a foundation for the emergence and evolution of the original de-Ba’thification idea (See Table 4.1. for a list of rationales and criticisms).

Table 4.1. Rationales and Criticisms

<table>
<thead>
<tr>
<th>Rationales</th>
<th>Criticisms</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>U.S. Officials</strong></td>
<td><strong>Too much reliance on émigrés (demands of Iraqi émigrés do not necessarily reflect the demands of general Iraqi public)</strong></td>
</tr>
<tr>
<td>• Transforming institutions in order to safeguard democratic transition</td>
<td>• de-Ba’thification would create inefficiencies and prevent democratization efforts</td>
</tr>
<tr>
<td>• Satisfying the expectations of Iraqi public through a popular policy</td>
<td></td>
</tr>
<tr>
<td>• Gaining the Iraqi support and trust for U.S. leadership</td>
<td></td>
</tr>
<tr>
<td>• Balancing the interests of Kurds and Shi`is against Sunnis</td>
<td></td>
</tr>
<tr>
<td>• Preventing a possible Ba’thist revival</td>
<td></td>
</tr>
<tr>
<td><strong>Iraqi Elite</strong></td>
<td><strong>The underlying interest of Iraqi elites was to seek revenge and gain political power</strong></td>
</tr>
<tr>
<td>• Securing the new regime and preventing a Ba’thist revival</td>
<td>• de-Ba’thification would prevent reconciliation and political stability</td>
</tr>
<tr>
<td>• Normalization and reconciliation</td>
<td></td>
</tr>
<tr>
<td>• De-ideologization of Iraqi society and cleansing the Ba’th ideology from social, political and education system</td>
<td></td>
</tr>
<tr>
<td>• Preventing a revenge campaign against Ba’thists</td>
<td></td>
</tr>
<tr>
<td>• Establishing meritocracy</td>
<td></td>
</tr>
<tr>
<td><strong>Iraqi Public Opinion</strong></td>
<td><strong>Basic human needs should be fulfilled before de-Ba’thification</strong></td>
</tr>
<tr>
<td>Interpretations of the rationales</td>
<td><strong>Political ambitions of people like Ahmed Chalabi</strong></td>
</tr>
<tr>
<td>• Protecting the new political economic and social system from Ba’thist revival</td>
<td></td>
</tr>
<tr>
<td>• Incorporating Ba’thists back into the society through a well-structured process that respects individual guilt</td>
<td></td>
</tr>
<tr>
<td>• Cleansing the system from corrupt and criminal activities that were tolerated under the Ba’th regime</td>
<td></td>
</tr>
<tr>
<td>• Comforting the victims of Ba’th party</td>
<td></td>
</tr>
</tbody>
</table>
The rationales that were expressed by the U.S. officials were to transforming institutions in order to safeguard democratic transition, satisfying the expectations of Iraqi public through a popular policy, gaining the Iraqi support and trust to U.S. leadership, balancing the interests of Kurds and Shi`is against Sunnis, and preventing a possible Ba`thist revival. These came out of the offices of the Pentagon and the CPA. Meanwhile, the DoS, some of the ORHA officials and the CIA believed that these rationales could not be achieved through a wholesale de-Ba`thification process. They criticized these rationales and argued that de-Ba`thification would create inefficiencies and prevent democratization efforts. The discussion between the Pentagon and the DoS reflected the debate in the literature between proponents and opponents of lustration and its role in democratization of a given country.

In addition to the rationales provided by the occupier, Iraqi elites also had somewhat contradictory rationales for de-Ba`thification. They wanted Iraq to be democratized and have a new politics that would not tolerate the Ba`th ideology. Most of the Iraqi elites explained the importance of “de-ideologization” of Iraqi society rather than the purging of individuals. Some of the rationales were establishing democracy and reconciliation, preventing resurrection of Ba`th, reintegrating Ba`thists to the new Iraqi society, cleansing the Ba`th ideology from social, political and education systems, preventing a revenge campaign against Ba`thists, and encouraging meritocracy. However, some of the elites admitted that these rationales were used to manipulate Iraqi public opinion and the underlying interest of Iraqi elites to implement de-Ba`thification was to seek revenge and gain political power. The rationales presented by Iraqi elites
reflected some of the existing rationales from the literature, but reintegration of Ba’thists to Iraqi society and establishing meritocracy were unique to de-Ba’thification context.

Ordinary Iraqis, on the other hand, did not consider a transitional justice mechanism due to their emergent needs under occupation. Those who knew about de-Ba’thification process associated it with individuals such as Ahmed Chalabi and their political ambitions. Different than U.S. officials and Iraqi elites, ordinary Iraqis underscored the importance of eliminating those who were involved in criminal activities more so than eliminating those who were only in the administrative ranks of the Ba’th party. Moreover, ordinary Iraqis expected de-Ba’thification to become the mechanism to avert a possible Ba’thist revival, incorporate Ba’thists back into the system, change a political culture that tolerates corruption and crime, and to comfort the victims of Ba’th regime.

Uncovering various points of view about any disqualification effort is necessary. One should know what to achieve with or expect from a disqualification effort in order to have a successful process. The overall picture showed that, as discussed in the existing literature, achieving democracy was always the first rationale that came out of those who were responsible in designing and implementing such a process. The rationales described by both the occupying powers and Iraqi elites were reflective of their need for legitimacy and political power. However, in the grassroots level, the expectations were different. Even though each group of stakeholders was fearful of possible Ba’thist resurrection, the Iraqi public was in need of redressing Iraqi society in such a way that corruption, cruelty, and the legacy of Ba’th party would not be tolerated anymore under the new political
system in Iraq.

What we can learn from de-Ba`thification case is that when an outside power sets up a transitional justice mechanism such as a purge, it should incorporate public opinion, to the greatest extent possible, in addition to the opinion of elites in a given society. This may help the occupier to gain public support and prevent potential resistance against its authority. The rationales described in this chapter showed that different people might expect different outcomes from the same transitional justice mechanism. In order to prevent unfortunate outcomes and satisfy the needs of as many as possible, the designers and implementers of purges should consider these basic points: all the rationales should be investigated before the mechanism was designed; the appropriateness of purges in fulfilling the expected rationales should be analyzed; and the rationales should be used as guidelines in every step of the implementation.

The discussion in this chapter provides the groundwork for the remaining analysis chapter. Chapter 5 describes and analyzes the details of de-Ba`thification design and implementation and how the rationales I present in this chapter are reflected in its design and implementation.
CHAPTER 5

The Design and Implementation of De-Ba’thification

5.1 Introduction

This chapter describes and analyzes the design and implementation of the de-Ba’thification process. The goal of this chapter is to trace the interconnections between the rationales explored in Chapter 4 with the design and implementation of the de-Ba’thification process. To be able to put my analysis in context, section 5.2 begins with introducing the existing literature and frameworks that point out several important design decisions and possible unexpected consequences that should be deliberated in advance.

This chapter then turns to analyzing the de-Ba’thification process. Some of the questions addressed in section 5.3 include: How the process was designed; how the occupier determined the positions and persons who would be subject to de-Ba’thification; how the institutions responsible for implementing de-Ba’thification were established; what kind of sanctions were enforced against those who were de-Ba’thified; how the decisions regarding when to start and when to end the process were made; and how de-Ba’thification related to other transitional justice measures, namely the Iraqi High Tribunal.

In section 5.4, I argue that because of several problems associated with the design and implementation of de-Ba’thification, especially its politicization, the process contributed to devastating consequences, including the insurgency, unofficial killings, a rise in sectarianism, the Islamization of the public sphere, and a governance gap that
harmed normalization and reconciliation in Iraq. The last section, section 5.5., draws conclusions on the design and implementation of de-Ba`thification.

5.2 Design and Implementation Frameworks

In this section, I will elaborate more on the existing studies and frameworks of vetting mechanisms for both the design and implementation phases that were briefly mentioned in Chapter 2. Existing frameworks and thematic studies present crucial design decisions to be considered by those who design and those who implement vetting processes. These decisions vary from deciding on the persons who fall within the scope of the process to when the process should end. Even though it is acknowledged in the literature that systematic planning is critical for the success of any transitional justice efforts, resources and tools exist that designers can utilize, there is still little attention directed by designers toward planning for vetting. Inattention during the planning stages can lead to several challenges during implementation. This section will present decisions made during vetting.

The most significant prerequisites for any vetting process are to first identify the positions and the persons who are to be vetted. Persons and positions are selected based on clearly defined criteria. The targets of vetting must be identified and clearly defined prior to the establishment of a vetting program. Failure to do so might jeopardize the entire institutional reform process and lead to chaos (VG 2006, 12). Targets of vetting can be certain positions in public institutions, all positions in public institutions or certain categories across institutions (Duthie 2007, 21). This decision may depend on available resources, political decisions, human rights records, rationales of disqualification efforts,
and time frame. However, from a human rights perspective, the most immediate norm might be targeting those who are the most responsible for human rights abuses or those who allowed human rights abuses to occur under the previous regime or during the conflict (Duthie 2007, 21). Herman Schwartz (1994) argues that positions and subjects of lustration should include individuals and institutions that were involved in human rights abuses and those who still pose significant dangers to human rights, while excluding private organizations. The decision of “who and what positions are to be vetted” can be very complicated. For instance, Andrew Rigby uses a fourfold typology in order to explain the range of collaborative activity prevalent in occupied Europe during World War II. His typology leaves the reader with the question of which category must be vetted from public office.

Table 5.1. Range of Collaborative Activity in Occupied Europe During World War II

<table>
<thead>
<tr>
<th>Motivation</th>
<th>Cooperation offered willingly</th>
<th>Cooperation offered reluctantly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual/self-interest</td>
<td>The traitor: unconditional collaboration for private gain</td>
<td>The accommodationist: collaboration in order to survive</td>
</tr>
<tr>
<td>Community interest</td>
<td>The patriotic traitor: Collaborationism in service of the occupier’s cause</td>
<td>The conditional collaborator: to serve the wider community</td>
</tr>
</tbody>
</table>

*Note:* From Rigby 2001, 20

In most post-conflict contexts, the most responsible institutions refer to those in the security and judicial sectors (Duthie 2007, 21). However, in many countries such as Czech Republic, Hungary and Poland the targets were extended to electoral posts, civil service, universities, national banks, senators and members of parliament, ministers, and media (Duthie 2007, 21).
The general and ideal criterion in determining these targets should be a person’s integrity or, in other words, “a person’s adherence to international standards of human rights and professional conduct, including a person’s financial propriety” (VG 2006, 20). During the post-conflict environment, collecting reliable data regarding the integrity of the employees in public institutions might be a challenge. Information about abuses and human rights violations might be covered up or destroyed, and any effort to monitor those events might be prevented (VG 2006, 13). In some countries personnel files might not have been established in the first place, or, if there are any, they might not be reliable (VG 2006, 13). It also might not be easy to identify the level willingness of collaboration as well. The lack of reliable evidence can easily blur the line between collaborator and victim, which might harm a process. Therefore, data must be collected pro-actively from a variety of sources such as personnel files, court records, party files, election registers, UN reports, NGO reports, truth commission reports, media reports, personnel census conducted within a public institution and independent investigation findings. Another method would be providing the public with an opportunity to come forward with information that can help to measure the integrity of serving employees as well as new appointments.

The kind and scope of the criteria used to judge one’s integrity might vary depending on the necessities and capabilities of the post-conflict country. In some contexts, high integrity standards might lead to the loss of a huge amount of human capital, and low integrity standards might diminish the level of trust in the process. Furthermore, how the criteria are determined might easily become politically contentious,
because the chosen criteria usually reflect the victor’s justice (Duthie 2007, 23). Vetting might be perceived as the victor’s way of morally judging past behavior and shaping future standards of integrity in public institutions (Duthie 2007, 23).

In some post-conflict environments, screening and excluding only for integrity might not be enough to accomplish all necessary personnel changes. Questioning integrity might not exclude those who lack necessary qualifications and skills and might not guarantee that the public personnel represent the population that it serves (VG 2006, 20). Therefore, considering individual capacity and representation can increase the chances of having a successful and reliable process. Individual capacity might include citizenship, minimum age, educational standards, professional qualifications, competence, experience or physical and mental aptitude (VG 2006, 20). Representation might refer to gender, ethnicity, religion, geographic origin and former warring faction (VG 2006, 20).

The second phase when designing a disqualification process includes determining, in advance, who will implement the process. Given the unstable nature of post-conflict states, there must be special, ad-hoc commissions established to oversee and implement the process (VG 2006, 21). These commissions should be independent and guarantee impartial and legitimate vetting processes (Schwartz 1994; Rigby 2001; David 2006; VG 2006, 21). However, in some contexts different models of vetting commissions can be set up depending on the vetting goals and the institutional demands. Vetting bodies can be centralized (one body implementing vetting for all public institutions) or decentralized (one body implementing vetting for one sector or one institution only) (Duthie 2007, 26).
Members of these commissions need to be selected carefully. They should be notable and well-respected individuals, who are not associated with the former regime or with the institutions to be vetted (VG 2006, 21). According to the Vetting Guidelines (2006, 21) the ad-hoc commission should have a well-staffed secretariat in order to have enough human capital to collect and prepare necessary information. It should also have a multi-disciplinary staff—composed of individuals who have enough expertise—adequate material resources and financial means to provide an effective and fair process, and security to protect its members from any risks associated with the decisions of the commission (VG 2006, 21). After careful research, a high and independent authority figure or figures, such as the constitutional court, the head of state, or international institution should appoint suitable individuals (VG 2006, 21).

If it is an internationalized vetting process, domestic actors should be incorporated into the process and the process should be integrated into domestic law (VG 2006, 22). Domestic ownership of the vetting process is significant for variety of reasons including: enhancing the legitimacy of the process, ensuring the application of local “know-how,” and supporting the domestic buy-in and sustainability of the process (VG 2006, 21). Also, as Meierhenrich (2006) explained, domestic ownership is important because the domestic actors or the population in general might resist the implementation of the process, which eventually led to undesired consequences.

The third phase includes designers selecting the most appropriate kind of vetting procedure. According to the Vetting Guidelines, there are two kinds of vetting types: Review and Reappointment. Review is an incremental *restructuring* of an existing
institution (Mayer-Rieckh 2007, 487). The initial goal is to identify those who lack integrity, competency, or any necessary qualifications to hold a position in a public institution and remove them for the public sector. The review process aims to disable networks that employees utilized to carry out crimes; thus, enabling the implementation of other transitional justice measures as well as weakening sources of resistance to the reform process (Mayer-Rieckh 2007, 488). The reviewing body must apply basic due process standards and must collect enough proof to declare one as unfit to hold public office (VG 2006, 15). The review process is preferred especially when regular discipline and appointment mechanisms are swamped or unavailable, or when broader personnel reforms are not needed (VG 2006, 16). This method had been used in many of the Eastern European countries after the collapse of communism, such as East Germany, Hungary, Czechoslovakia, Poland, as well as, in other countries like Greece, Bosnia and Herzegovina, and El Salvador.

In reappointment, instead of reviewing and removing those who are unfit to hold public office, every individual regardless of their background gets a chance to apply for any public post. First, the public institution is dissolved, then a successor institution is established, and finally, the open competition begins in order to select the most suitable individuals for each post (VG 2006, 16). Mayer-Reickh (2007, 488) defines reappointment as “the disbandment of an abusive institution and the establishment of a renewed institution.” Under a reappointment process, serving employees as well as external employees are given the opportunity to demonstrate that they are persons who are competent and suitable for the posts. This type of vetting provides an equal
opportunity for all. Further, it is more practical than a review process especially when there is a necessity to carry out personnel reforms such as establishing the gender or ethnic balance in an institution, merging institutions, or, in some cases downsizing an institution (VG 2006, 16).

There are, however, some risks associated with a reappointment process. These risks include political interference in independently operating sectors, intimidation or bribery of vetting officials, infringement of due process rights, and a possible governance gap because of the removal of too many needed employees (USIP 2008 and VG 2006, 16). Also, there are always additional risks associated with removing too many needed employees. Unemployed individuals, especially those who worked in the security sector may become involved in unlawful activities or create security problems (USIP 2008, 16).

It was suggested in the Vetting Guidelines that “a reappointment process should therefore be limited to circumstances when the institution is fundamentally dysfunctional or compromised, and needs to be changed significantly” (2006, 16). Also, reappointment has to be carried out as quickly and as early as possible because it might lead to legal uncertainty (VG 2006, 16).

During the fourth stage, designers of the vetting process should ensure that they are maintaining procedural standards. The United Nations Secretary-General has emphasized the importance of procedural standards in vetting programs. In his August 23, 2004, report he indicated that “procedural protections should be afforded to all those subject to vetting processes, whether current employees or new applicants” and that vetting mechanisms should function “fairly, effectively and in accordance with
international human rights standards” (in Andreu-Guzman 2007, 466). These procedural standards are: the right to be informed of allegations; the right to respond to allegations; the right to be informed of charges in a reasonable time; and the right to appeal to a court or an independent body (Human Rights Watch 1991; Vetting Guidelines 2006; Andreu-Guzman 2007; Mayer-Rieckh 2007).

In the fifth stage of the process, designers should consider the appropriate time is to implement a vetting process. In some places, such as Albania, Bosnia and Herzegovina, Bulgaria, the Czech Republic, East Germany, El Salvador, and Greece vetting or lustration came immediately within one year of the transition. The post-World War II purges in Europe were also expeditious. In Poland, Romania and Hungary, however, lustration came late, despite the popular demand for lustration in other post-communist European countries. The benefit of having later lustration efforts are that they are not implemented with the motivation of revenge against certain groups of people, and, thus, they do not appear to be as “wild” as earlier lustration efforts. In spite of the mildness and civilized nature of late lustration efforts, some scholars argue that they are less effective than early lustration processes. For instance, Duthie (2007, 29) maintains if vetting is enforced early, individuals who lack integrity will have less influence on the design of the new institutions than individuals who are excluded later in the process. Early vetting efforts, then, might enable successful institutional reforms. Comparing the late lustration effort in Poland and the early lustration program of Czechoslovakia, Noel Calhoun (2002) sets out some disadvantages of the timing of each program. Calhoun argues that late lustration may cause unnecessary instability and distractions and may not
be helpful in establishing a public memory of the past; early lustration efforts may lead to immature planning that can wound democracy.

The sixth step includes deciding in advance how long the process should last. Duthie argues, “duration, for its part, is worth considering because of how it may affect the general perception and understanding of vetting’s rationale” (2007, 29). Similarly, Horne and Levi note that lengthy lustration may lead to less popular support for and non-compliance with governmental policies, thereby adversely affecting citizen trust of politicians and government (2004, 62). If the vetting is planned to be a short-term measure, and if it was implemented for a long period of time, even the vetting supporters would harshly criticize its premise. Additionally, Rumin argues, “the capacity to collect and process information is a critical factor for the duration of the vetting process — the longer the process, the more its implementation may be subjected to substantial changes affecting the consistency of the outcomes” (2007, 424). Given that, disqualification like other transitional justice mechanisms must be applied within a temporal frame (Offè 1993).

Another important design decision, the seventh phase, that should be considered in advance are the sanctions that will be applied to targets of the process. Balancing the sanctions with the severity of the wrongdoing (the principle of proportionality) is critical for the success of any lustration mechanism (Meierhenrich 2006). The range of sanctions varies depending on the rationale of vetting processes (Duthie 2007, 24). Once an individual is positively vetted, she or he can be fired, temporarily suspended, transferred to insignificant posts, sent abroad to other posts, forced to retire from active duty, given
less responsibility, pushed to take a leave with pay and retire later, offered a retirement package, terminated from employment and restricted to apply for public posts, fired but allowed to reapply for other public posts, allowed to work with no promotion, and given the option of resigning to prevent the publicizing of the vetting commission’s decision. In order to understand different countries designing different personnel systems Roman David provided a different outlook to vetting types. David (2006; 2011) puts personnel systems under four major categories: *dismissal* without allowing any chance for tainted officials to retain their posts; *exposure* of tainted officials, but allowing them to retain their posts; *confession* of tainted officials’ past without any action; and *continuation* of employment without stipulating any conditions. Further, he clarifies,

A personnel system that is based on dismissal, that is, a system under which a person associated with the previous regime is not allowed to hold certain posts in the new administration, may be referred to as an *exclusive system*. The system is exclusive because it does not give tainted officials any chance to retain their positions. A personnel system that is based on exposure of tainted officials may be called an *inclusive system*. The system is inclusive because the official is allowed to hold a position of trust in spite of his or her past. The third type is a personnel system under which the wrongdoer has to demonstrate that he or she is worthy of receiving a fresh start through his or her confession of wrongdoing… [this] personnel system is referred to as *reconciliatory*. Although the official is allowed to hold a public position, this system is not a type of inclusive system because it is based on a different method: the inclusive system is based on government-based exposures, while the reconciliatory system is based on the wrongdoers’ confessions. A personnel system that does not deal with the problem of former personnel, and thus may not even be labeled a personnel system is referred to as a *system of continuance*. These classifications are ideal types. In reality, countries may combine different solutions to the personnel dilemma, creating a *mixed system*. The

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26 Roman David (2011, xi) uses the concept of lustration systems as a regional (CEE) variant of personnel systems.
outcomes of the mixed system…oscillate between exclusion and continuation, but they may also blend elements of dismissal, exposure, and confession (David 2011, 24-25).

Even though some of these sanctions are milder, the stigma of being positively vetted can be the most severe sanction of all (Duthie 2007, 25). For instance, in Czechoslovakia many people may find their names listed in a record of real or alleged collaborators published in a newspaper. These people would then feel humiliated with the stigma of being named as an enemy of democracy (Šiklová 1999; Teitel 2000).

Lastly, the designers of a vetting process should plan the process in such a way that it does not impede the implementation of other transitional justice measures such as criminal prosecutions, truth commissions, reparations or institutional reforms such as changing symbols that associated with abusive practices in a given country. Vetting might function as a stand-alone process or a part of a holistic transitional reform depending on the needs of post-conflict country (Mayer-Rieckh 2007, 483). However, because vetting is prone to political manipulation and increases security threats, de Greiff (2007, 527-530) argues that it might impede other transitional justice mechanisms. Thus, the vetting process should be incorporated into the broader institutional reforms that a transitioning country needs and should complement necessary transitional justice measures.

Carefully designing a vetting program by considering these design decisions, however, does not necessarily guarantee a successful program. There are always potential risks or undesirable consequences of vetting processes. Therefore, designers should assess these risks in advance. Some caveats associated with vetting are “political misuse”
of the process for partisan purposes, creation of a “governance gap” as a result of extensive human capital loss, and “destabilization” or threats to security that come with increasing unemployment (VG 2006, 14).

A vetting process can be easily manipulated and politicized. Rigby explains that,

When a political movement takes up the issue [purge or lustration] and runs with it to advance its own particular interests, and when significant sections of the population are susceptible to such an appeal for their own reasons (shame, guilt, resentment), then there is every likelihood that what might have started out as a controlled process will escalate beyond the boundaries that most of us would deem acceptable in a liberal democratic state (2001, 109).

Politicized vetting processes can easily undermine the significant rationale of “democratization.” How vetting or any justice mechanism should be perceived is explained in a famous quote of the French Minister of Justice in 1945-1946, who was in charge of the purges of the Vichy regime collaborators with Nazi Germany, Pierre-Henri Teitgen, “[p]olitical justice isn’t political methods and means applied to justice, it is justice with its principles and essential rules applied to political activity” (in Lottman 1986, 169).

When institutions are purged and countries rely greatly on lustration, they can easily deprive themselves of significant manpower and the talent that they need for democratic consolidation and economic reconstruction (Offe 1997, 94-95; Patterson 2011; Huyse 1995, 63). Lottman gives a telling account of this dilemma, “[a] history professor in a colonial high school was discharged and replaced by a woman circus rider, since no one else could be found. A professor of modern languages was replaced by a tutor who had never passed a test in that language” (1986, 204-5). Thus, there should be a considerable amount of assessment regarding the human capital cost and its effect on
institution’s legitimacy when most of the employees lack integrity. Without sacrificing a lot of human capital, indispensable reforms can still be accomplished (VG 2006).

There is also a risk of increasing violence and destabilization especially when there is no government authority or political will to implement the process. Security problems are likely also when vetting processes are not linked to disarmament, demobilization, and reintegration programs (DDR) (VG 2006, 14). Those who are already mobilized such as security forces or army personnel can easily turn to armed opposition or organized crime (VG 2006, 14). Even though Letki (2002, 542) claims that “violent events resulting from the implementation of disqualification procedures did not occur in any of the ‘lustrated’ countries,” Offè (1993, 30) still warns the implementers that “dismissals may provoke hostile attitudes on the part of those affected…leading them to undertake acts of sabotage, revenge, obstruction, resentment and conspiracy.”

Presented here are some of the design decisions and existing frameworks that help to shape this study and provide an informational and theoretical foundation. Other than Meierhenrich’s framework analyzing the ethical guiding principles of lustration through the de-Ba’thification case, existing studies do not analyze the role of occupiers or outside forces as the leading designers and implementers of disqualification efforts. My research expands our knowledge about the latest effort, de-Ba’thification, through analyzing the design and the implementation of the de-Ba’thification policies, procedures, and consequences under the administration of an occupier. The next section aims to assess whether the rationales identified in Chapter 4 are reflected in the design and implementation of de-Ba’thification.
5.3 Design and Implementation of De-Ba`thification

5.3.1 Who Should be De-Ba`thified and Why?

As described in previous section, vetting should be based on individual responsibility. According to de Greiff (2007, 524), the criteria for a vetting process should not include membership in groups such as political parties, because this does not assess individual behavior. He therefore claims that both the de-Nazification processes in post-World War II Germany and de-Ba`thification efforts in Iraq are closer to purges than vetting (2007, 528). Yet, this was not how the occupying forces believed it as occurring. Many of the interviewees who participated in this study refrained from using the word purge to describe the de-Ba`thification process. They believed that by removing the top four echelons of the Ba`th party from the public sector and dismantling institutions that were loyal to Saddam Hussein integrity could be established.

The targets of the de-Ba`thification process were explicitly mentioned in the first two CPA orders. CPA Order #1 targeted all senior members of the Ba`th party and individuals holding positions in the top three layers of management in every government institution. CPA Order #2 extended the targets to members of military and intelligence services and eventually to a wide range of public institutions. With CPA Order #2, institutions that symbolized the Saddam Hussein era would be dissolved, and persons employed by any of these institutions would be dismissed and held accountable. For the entire list of dissolved institutions please see Appendix B.

These orders proved that the targets of de-Ba`thification in Iraq were determined in advance, even though the criteria that were used to identify these targets was not
explained in detail in any of the orders. Why the first order targeted the top four echelon of the Ba`th party but not the ones who were holding the ranks lower than Group Member (`udhu firqa); why only the top three layers of management in public institutions were subjected to investigation; whether everyone working in the dissolved entities held senior member status, lacked integrity, or was involved in human rights abuses or professional misconduct; how the targets of de-Ba`thification were identified; were all questions that remained unanswered. The rest of this section will present some of the findings associated with these unanswered questions.

Kanan Makiya, an intellectual figure behind de-Ba`thification, explained that by establishing the levels of party membership and status, the U.S. took a correct and even practical first step (interview with Kanan Makiya October 27, 2010). This step happened mainly because in order to become a member of the `udhu firqa, one had to run for elections within the party. In other words, one needed to be able to enjoy the benefits that the party would provide, believe in the Ba`thist ideology, involve oneself in criminal activity, or prove his loyalty to Saddam Hussein (interview with Mishkat Al-Moumin November 19, 2010; interview with Walter B. Slocombe September, 23, 2010; interview with Frederick C. Smith November 10, 2010).

Douglas Feith believed that if one held a top-level position within a ministry, it meant that he or she had done something bad to be there (interview with Douglas J. Feith November 29, 2010). If such persons were in charge of managing public institutions, national government ministries, and affiliated corporations, they had to be purged (interview with Walter B. Slocombe September, 23, 2010). Also, Douglas Feith
described, full members were responsible for the way the system was in Iraq, and, according to the intelligence that his office received, they were the ones who needed to be cleansed from the system (interview with Douglas J. Feith November 29, 2010).

According to Mowaffak Al-Rubaie, an IGC member, former National Security Advisor and former member of Council of Representatives, the process of de-Ba’thification (especially with the CPA Order #2) demonstrated that the designers did not overlook important considerations, such as that there were too many people in intelligence or in security agencies who were not Ba’thists but committed crimes (interview with Mowaffak Al-Rubaie August 25, 2010). Once the most responsible institutions were dissolved, criminals that did not register for the party were purged. Moreover, as explained in CPA Order #1, full members were not only to be purged and banned from future employment in the public sector, but also to be investigated for criminal conduct as well as threats to the security of the CPA. Therefore, many intellectuals or politicians, who supported the idea of de-Ba’thification, believed that the targets of the de-Ba’thification process were identified based on human rights issues and security concerns.

Yet, a counter-argument was that purging high-ranked Ba’thists did not necessarily mean that criminals or Saddamis were picked out. Also, through disbanding some public entities, many innocent individuals lost their source of income. With the de-Ba’thification process, those who were low-level Ba’thists without any affiliation with the dissolved institutions were ignored. Low-ranked Ba’thists like high-ranked ones were also involved in deceitful activities such as writing reports, memos or notes for the party
about the activities going on in their neighborhoods or spying on neighbors and producing reports about them, which could eventually lead to murder or torture (interview with Monin July 9, 2010; interview with CPA translator October 17, 2010). Some even mentioned that low-level Ba’thists committed more human rights violations than high-level ones (interview with Alaa Al-Tamimi February 2, 2011). Also, some low-ranked Ba’thists were more dangerous than senior members, because it was hard to identify them as easily as senior Ba’thists (interview with Monin July 9, 2010; interview with NGO worker October 17, 2010). Thus, the divide of high-ranking and low-ranking membership status was unnecessary because it ignored individual responsibility. Rend Al-Rahim Francke, an Iraqi political activist and a participant in the FoIS explained that de-Ba’thification was implemented arbitrarily and went deep without even considering individual responsibility,

… the Ministry of Education was virtually emptied out. I speak of it because I know it personally. There were no teachers to teach, and they all ran away because in the teaching profession, you had to join the party. This shows this broad order did not take into account any dimension of personal responsibility and it was applied arbitrarily and indiscriminately.

…

Four echelons of the leadership is quite deep and the most important thing was that neither Bremer nor the de-Ba’thification commission took individual responsibility into consideration, and they did not recognize the fact that there were many people who had committed serious crimes. Not only higher Ba’th officials involved in crimes …There were lower-level party members or even people who were not party members, but this should not mean that they did not support the party and Saddam. They may have been torturers in the jails…You can be a member of `udhu firqa, udhu shu’ba, nasir … but what did you actually do? (interview with Rend Al-Rahim Francke September 7, 2011)

When I asked Paul Bremer how he would respond to the criticism that de-Ba’thification was not based on individual responsibility, he responded,
That’s what the last paragraph of the order was for [because it gives full authority to the administrator of CPA or his designees to grant exceptions to individuals who were the targets of de-Ba’thification on case-by-case basis]… It was clear from the start that…when I announced the decree, the coalition did not have the capability of making fine distinctions between Abdul Aziz, who joined the party because he really believed the ideology and subsequently became a teacher, and Abdul Talim, who wanted to become a teacher and joined the party because it was the best and the easiest way to become a teacher (interview with Paul Bremer, November 29, 2010).

It seemed that with exceptions, the CPA handpicked individuals with high integrity standards. However, the reality was “Yes! Abdul Aziz is a Ba’thist, but we cannot run the Ministry of Transformation without him because… he is, let’s say, the chief financial officer, and he is the only one who knows how to make the ministry go, so we make the exception” (interview with Paul Bremer, November 29, 2010). Individuals, whose education, experience, expertise, and aptitude were required for keeping the system up and running, would be exempted from exclusion. Thus, de-Ba’thification was designed and implemented to take into consideration individual capacity, but only when necessary for the system.

The assumption that those who held `udhu firqa or above membership status within the party hierarchy and those who were in the top three layers of management in government institutions were criminals without considering individual responsibility was a major design fault. However, the question that remained was how did the designers of de-Ba’thification gather the necessary information from which they made this assumption. As James Dobbins explained “some of the émigrés who were associated with

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*Exceptions and exemptions (istisna) are used interchangeably by the interviewees and in documents.*
the intervention…were putting pressure on the U.S. to engage in a more sweeping effort” (*PBS* interview with James Dobbins June 27, 2006). Feisal Istrabadi, a professor at Indiana University and a participant in the FoIS, also supported the idea that a blanket purge was a colossal mistake that was put forth by Iraqi exiles who had left Iraq when they were children, meaning that they did not have enough information about the system and the party to make an informed decision. He blamed himself as well and explained,

Kanan Makiya left Iraq in 1968 when he was 18 years old and never came back. I left Iraq in 1970, and I was 8 years old. Ahmed Chalabi left Iraq in 1958, when he was 13 years old, even before Ba’th took over. When we came back to the country after these years we should have done a reassessment. Bremer, Wolfowitz, and others did not know anything about the history of Iraq and reality in Iraq and they did not care. They just had the ideological view—how things should work in Iraq…So they did not know anything about the country, and we, who were in exile, did not have the knowledge as well (interview with Feisal Istrabadi September 14, 2011).

The US government relied heavily on these émigrés who did not have enough knowledge to help plan a well-structured de-Ba’thification process.

When it came to implementation, in order to have consistent and effective de-Ba’thification process, CPA officials relied upon numerous resources such as: interviews, public records of promotion or ascension of party members; judgments of CPA ministry advisors; testimony of Iraqis who have worked or lived with the person in question; assessments of leading Iraqi figures; and government records revealing bonuses or other privileges.\(^{28}\) Additionally, as stated in CPA Order #5, individuals who failed to comply

\(^{28}\) These sources were explained in an internal memorandum sent to Paul Bremer by Robin Raphel on May 15, 2003 (a day before CPA Order #1 was announced) and also later in CPA Memorandum #1.
with a request for information could be imprisoned for up to a year or might pay fines of up to $1,000 (CPA Order #5).

The U.S. government was naïvely hopeful that Iraqis would help them once the de-Ba’thification process was initiated and, as a result, many high-ranking Ba’thists would self-select themselves out of government. Bremer stated that “I think in the long run, it will…hopefully, encourage more Iraqis to come and give us information about more Ba’thists, and that's really what we have to have happen next” (DoD News Briefing 7/24/2003). Also, Rumsfeld asserted, “the people [Iraqis] will do the vetting. People on the ground know these folks [Ba’thists]. They know the bad ones” (DoD News Briefing 4/15/2003). Ali Allawi recollected,

> We had a list of individuals who would be purged and those people did not show up at work because they knew that they were in the top of our list. Others, they wanted to hide their identity and tried to redefine their enrollment in the Ba’th party. And these people continued until there were other informants who informed on them to Americans before the de-Ba’thification Commission was created…so it was quite chaotic in the early days. If you had a list of, say, 10000 people, who were in the high echelons, probably something like 70% of them had voluntarily removed themselves (interview with Ali Allawi May 21, 2010).

Similarly, Scott Carpenter, the director of the governance group for the CPA and senior advisor to Paul Bremer explained,

> We had the information on the salaries of individuals who worked in the ministries, so it was clear that when the additional salary came in, it meant that they were Ba’thists…we had those documents. It was not really a problem in the south which was self-de-Ba’thified, and the ministries in Baghdad, we had
adequate documents to be able to go after certain people…what was interesting was after the order was promulgated, a lot of Ba’thists and even senior level members who continued holding on their positions had to resign. Part of the reason that they did so was because of the pressure that was mounting on them from the people in the ministries…once they knew de-Ba’thification order was in place a lot of people simply left. These people knew that they would never be able to work with their colleagues who knew about their membership (interview with Scott Carpenter October 27, 2010).

Many Ba’thists left their posts willingly or after the CPA had gathered enough information on their party status. Nevertheless it was hard to systematically collect enough and reliable data for an extensive database to be established. ORHA and CPA officials had to learn about the country and the reality of Ba’th membership on the fly (interview with Paul Hughes, November 9, 2010). During my interview with Paul Hughes, former senior staff officer of the ORHA and later the CPA, he explained some fascinating stories that showed the ignorance of occupying forces and created major design and implementation errors. For instance, he explained that they had no idea that there were 27 ministries in Iraq; they mistakenly thought there were only 23. Therefore, the occupying forces did not know how to manage these new ministries that were “popped up” when they got on the field (interview with Paul Hughes, November 9, 2010). Additionally, they did not know that military personnel who were Ba’th party members had different identification cards with specific symbols on them. Another example that Hughes shared was the lack of knowledge regarding honorary party membership status. He explained that,

Before the war, in May 2002, there was a prisoner exchange between Iraq and Iran. Two hundred Iraqi POWs came from Iran to exchange some Iranians, these guys had been in POWs camps in Iran since 1988 at the earliest… and when they were repatriated to Iraq, Saddam awarded every one of them with `udhu firqa rank. These guys got homes, cars, all this stuff, we are talking about. The guys
who were like privates or sergeants in the Iraqi military, who spent their best years probably somewhere in POW camps that had no clue what is going on in the world, would then come back to Iraq and suddenly they had possession of a nice home, car and chauffeur and all that stuff and they became card-carrying members. And, guess what happened when we showed up? These guys were not in any position of responsibility (interview with Paul Hughes November 9, 2010).

Almost six months after the first de-Ba’thification order was issued, these former POWs were excluded from the order. Stated in Memorandum # 7,

the Iraqi Governing Council shall authorize the continued employment of current or recently discharged Iraqi civil servants who were:

a) held as a POW by Iran during the period September 4, 1980 through June 1, 2003;
b) released and repatriated to Iraq by Iran after being held in that status; and
c) granted ‘Udw Firqah’ status following his or her release and repatriation to Iraq and because of his or her status as a former POW.

The implementation of de-Ba’thification at the ministerial level was also challenging. First, ORHA and later CPA officials who were responsible for having ministries up and running had difficulty understanding the necessity of de-Ba’thification. Since their task was to have functional ministries as soon as possible, Ba’th party membership was not as important to them as competency. Second, they did not have guidance on how to implement the order. Third, they believed that they did not have enough knowledge on how to judge who was criminal especially when the Iraqis they worked with were reluctant to disclose their party status and when they did not have enough documentary evidence.

Some of the officials working in the ministries accepted the necessity of some sort of disqualification effort. For instance, Robert Goodwin, CPA advisor at the Ministry of Health, argued that

... there was a need to remove those people. Unfortunately, many medical
professionals were involved in some real atrocities. Medical professionals were present at most interrogations so that the interrogators could get inflict the most pain and still keep people alive. There’s evidence that executions were timed in such a way that things like corneas were taken from the dead bodies and then the next day they were implanted into patients that needed cornea transplants. So that Baath party leadership needed to go. Some of those medical professionals that were involved in such crimes needed to be gone [sic] out of the ministry (USIP interview with Robert Goodwin August 26, 2004).

Also, Joe Morgan who was working in the Ministry of Housing and Construction explained that de-Ba’thification “did not greatly degrade the work of his ministry” and it even “allowed him to remove some deadwood and move others around” (Rudd 2011, 346). Similarly, Raoul Stanley who was working in the Ministry of Public Works found de-Ba’thification necessary since it helped him remove and shift personnel around (Rudd 2011, 349).

Yet, many criticized the way the de-Ba’thification process was designed. Gerald Burke who worked for the CPA as an adviser to Iraq’s Ministry of Interior explained that making an argument that high-ranked Ba’thists—who hold party membership status of ‘udhu firqa or above—were criminals was valid for some ministries and institutions such as the Ministry of Interior, Ministry of Defense, National Olympic Committee or Iraqi intelligence service (Jihaz Al-Mukhabarat Al-A’ma) but not for the Ministry of Health, Ministry of Finance, or Iraqi police (interview with Gerald Burke November 9, 2012). Some argued there were people who were, for instance, deputy ministers but not higher level Ba’th party members (interview with HNDBC advisor October 12, 2012). Given that some CPA ministry advisors decided not to implement the order, they thought implementing the order would preclude their primary task of having ministries up and functioning. They did not systematically follow the order; instead in each ministry U.S.
officials had their own style of vetting not just based on party membership status but based on competency. They were already implementing an incremental de-Ba’thification process under ORHA, and they decided not to change their approach. David Nummy, senior advisor at the Ministry of Finance, explained that under ORHA, the process was not de-Ba’thification, but determining who was “appropriate to give the power, to empower and get the ministry up and running” (interview with David Nummy November 18, 2010). His goal was to find competent employees who were willing to have the ministry up and running and empower them in order to have them start focusing immediately on the reforms necessary for a new Iraq (interview with David Nummy November 18, 2010). In his USIP interview, he gave details of his experience with the Ministry of Finance and explained why he refused to implement CPA Order #1,

I talked with all of the people that I had put into what were essentially the directors general positions. In individual conversations I asked every one of them, “Were you a member of the Baath Party, when did you join the Baath Party, why did you join the Baath Party?” With the exception of about three officials, every one of them told me that they were a member of the Baath Party at the lowest level, that most of them had never been members of the party, but had joined about two years prior when they had been approached and told if they didn’t join the party they could no longer hold a position in government. So they had joined, but they weren’t active in the party. And there were two of the director generals who had never joined…Of the senior people at the Finance Ministry, five or six people had been very senior level members of the Baath Party. Three of those people just never showed up at our meetings. I had never seen them. Two of them had shown up. I talked to them and to people around them to try to make my own conclusion about whether they had been active, committed members of the party or were just members in order to keep their jobs. My initial conclusion was that in the most basic sense they had not been the bad guys; they had not committed bad acts. While they might have been active in the party in the senior level, they hadn’t committed crimes against humanity. When the de-Baathification order came out I was… extremely vocal in opposing it…I came to the conclusion that if I had executed the de-Baathification order it would completely unravel everything that had been accomplished. So I essentially ignored the order and didn’t implement it. It was not clear to me that there was really a high degree of
importance being placed on implementing the order; it was really more important to announce the order (*USIP* interview with David Nummy October 14, 2004).

David Nummy was not the only official who refused to implement de-Ba’thification. Mishkat Al-Moumin, former Minister of Environment in the interim government, and a supporter of de-Ba’thification, argued that

> the most important thing to me was getting the job done, doing what was really needed to be done as a professional minister... the view I had for the ministry was that to do what was required so my main priority was not to de-Ba’thify people, my main priority was to establish a ministry (interview with Mishkat Al-Moumin November 19, 2010).

Some of the military officers in the field such as U.S. General Raymond Odierno (4th Infantry Division in Tikrit) and U.S. General David Petraeus (101st Airborne in Mosul) also refused to carry out the de-Ba’thification order. General Odierno was not pleased with de-Ba’thification because implementing it in Saddam’s hometown Tikrit would mean getting rid of everyone. As chief military correspondent for the *New York Times*, Michael Gordon described, “One could be no more surprised to find lots of Ba’thists there [Tikrit] than you would be to find conservative Republicans in South Carolina” (*PBS* interview with Michael Gordon August 10 and August 11, 2006). Similarly, General Petraeus thought that “rather than humiliate and ultimate [sic] pauperize the now surrendered enemy, driving them into future acts of desperation against the Coalition,” the Coalition should allow Ba’thists to retain their jobs (Agresto 2007, 125). Thus, with the goal of getting Mosul back on its feet, he started giving exemptions to everybody who denounced the Ba’th party. These discretionary implementations shook the authority of CPA as the sole administrative body in Iraq and Ba’th party members who lost their jobs as a result of de-Ba’thification started asking for similar treatment. Overall, these
inconsistencies in implementation led to confusion and chaos.

Those who tried to follow the order and implement de-Ba‘thification faced several challenges, the most important of which was the lack of guidance. Some believed that the lack of guidance gave discretion to those who were already in the field. CPA senior advisor for National Security Affairs Fred Smith argued, “When implementing the order [de-Ba‘thification]…or the other orders, we told Jerry Bremer what we were doing, he let us alone. If he heard we were doing something off-track he would let us know, but you did it on your own” (interview with Frederick C. Smith November 10, 2010).

Nevertheless, some officials found it very hard to implement an order without any guidance. David Dunford, an advisor responsible for re-building Iraqi Foreign Ministry, explained,

I was not given a whole lot of guidance. We knew that there were 55 guys. Their pictures were memorialized on a deck of cards. We knew we couldn’t work with them. That included the Foreign Minister. I made my own judgment that the next guy in line—I actually interviewed him—that I wasn’t going to work with him. Other than that we were simply told to look for potential candidates for leadership of the Foreign Ministry. Interestingly enough, the guy who I initially started out with was the leader of what we called the Foreign Ministry Steering Group. Some weeks later when the de-Baathification policy was announced, I had to fire him. I had submitted his name to something called the Fusion Cell at the palace, where intelligence agencies hung, and some days after I had fired this guy I got back a piece of paper that said he’d been cleared, even though he clearly was a Baath Party member, under the Bremer March 16th Policy of de-Baathification. I guess what I’m saying is I didn’t get much help in terms of guidance or in our intelligence concerning anybody other than the top 55, which I thought was abysmal (USIP interview with David Dunford August 25, 2004).

David Nummy also added,

One of my criticisms of the order is that it was issued and there was no thought about how to implement the order, there was no thought whatsoever about how to look at people on a case-by-case basis to have some sort of due process involved so… at least when I was there were no guidelines, and there were no procedures,
and I very much just sort of jiggled on what had to be done in the context of Ministry of Finance (interview with David Nummy October 18, 2010).

The lack of guidance got even more challenging when the employees did not want to disclose their party status or when the necessary documentation was plundered. As Paul Hughes explained within the Ministry of Defense, no one wanted to disclose their party status, and it was impossible to pull out some of the central registry of Ba’th officials because the Ministry of Defense complex was ransacked and the documents were looted or burned (interview with Paul Hughes November 9, 2010). Given those problems, some U.S. officials decided to use other individuals working in the ministries to give information on their colleagues. Alex Dehgan, CPA Special Advisor for Non-Proliferation, explained,

> The United States Government had no good vetting procedures. I worked in the Office of National Security Affairs and my best friend was a person who was in charge of developing vetting procedures. And there were no reliable methods to vet people. So, when we hired Hussein, we asked him to identify people that he trusted and had known for 20 years. And it was through that circle of people, who knew each other’s families and backgrounds, that we recruited employees. We tried to get diversity. We had Christians and we had Shia and Sunnis and Kurds and Arabs all working for us. I think it’s important to have a team that represents a kind of composite of Iraq. But they are also all people who are connected to at least a couple of members of our staff in multiple ways. Because there were no other reliable vetting procedures, we had to use the endemic vetting procedure, which was recruiting someone’s cousin’s father’s sister. When I worked on the Soviet Union, it worked the same way because of the fear that otherwise someone might be a KGB officer. But if you were within that network of people that someone knew and recommended, you were always safe (USIP interview with Alex Dehgan August 13, 2004).

Gerald Burke, who worked for the CPA as an adviser to Iraq’s Ministry of Interior also stated that there did not exist security clearances or personnel folders to identify who was high-level Ba’thi and who was not. Therefore, he recalled,
We identified a guy to be the police chief. His name was Rizak. He looked like a compatible guy...we had to search for Rizak and other guys...What we did was to rely upon asking Ahmad what he thought about Mohammed and asking Ali about Rizak...so developing a consensus among staff, who is the best guy? I think it was the air force intelligence that helped us. They conducted polygraph tests. In this way, working together we managed to identify one chief who appeared to have no accusation of corruption against him (interview with Gerald Burke November 9, 2012).

The overall picture shows that too much reliance on émigrés without identifying clear and informed criteria on how to select the targets of de-Ba’thification led to several confusions and inconsistencies during the implementation phase. This also undermined the seriousness and sincerity of Americans in de-Ba’thifying Iraq. Furthermore, the lack of clarity in how the integrity standards were established gave Iraqis, who later administered the de-Ba’thification process, the desire to seek revenge and use this policy for their own political interests. It also damaged the premises of cleansing the system from Ba’thism, protected the new regime from a possible Ba’thist revival, and safeguarded democratic transition.

5.3.2 First the Occupier, Then the Politicized Commissions

After the CPA issued the first two orders, there was administrative confusion on how to set up a commission to implement and oversee de-Ba’thification. There were several attempts. For instance, Order #5 established the IDC on May 25, 2003. Later, on June 3, 2003, the ARCs were established in order to undertake the functions of the IDC. However, neither the IDC nor the ARCs were structured to undertake de-Ba’thification. Later in November 2003, the CPA handed the process to the IGC; Memorandum #7 overturned the Order # 5 and later the IGC established the HNDBC. As an Iraqi lawyer
recalled, “…basically, Ambassador Bremer was confused during the phase of what to do with it. So he came to the IGC and said, ‘Look, we need to set up a commission to address the issue of de-Ba’thification…the order provides for it but there was no work done on this and you, you guys, need to come up and do it’” (interview with Iraqi lawyer June 4, 2010). Later as Bremer explained, “the IGC set up…a sub-committee or council [HNDBC]…it was headed by Ahmed Chalabi. Chalabi then spent about a month to put together the process…He presented those ideas to some of my advisors in…early December” (interview with Paul Bremer November 29, 2010). The memorandum that Bremer sent to CPA officials declared that “De-Ba’thification is now an Iraqi process. CPA civilians and Coalition Military personnel are no longer responsible for de-Ba’thification. You should therefore immediately cease any involvement in de-Ba’thification” (December 8, 2003). Even though Bremer empowered the IGC to carry out the de-Ba’thification process, the CPA remained responsible for overseeing its work.

Because Ahmed Chalabi was the president of the IGC at the time, he took the lead on de-Ba’thification and became the chairman of the HNDBC. The structure of the HNDBC was shaped in a meeting. The HNDBC advisor recalled that meeting,

…at the time, it was something like twelve members from eight or ten parties, which was a part of the IGC which included the SCIRI, Dawa party,…the Kurdish parties, the INC, the Communist party and the Assyrian party. At that meeting…they decided to go with a hierarchy created by Yonadam Kanna, who was the chairman of Assyrian party…that structure had five general managers (interview with the HNDBC advisor June 9, 2010).

Each Director General (DG) was responsible for different tasks: Culture and Media, Information, Legal Issues, Internal Administration, and Executive Coordination and Oversight. The decisions regarding who would be the DGs were purely political. For
instance, Chalabi’s protégé Ali Feisal Al-Lami became the DG of Executive Coordination and Oversight, Maliki’s deputy was appointed as the DG of Internal Administration, and the SCIRI representative was selected as the DG of Legal Issues (interview with the HNDBC advisor June 9, 2010). They were not selected based on their expertise or merit, nor were they well-known or notable outside the political groups that they represented. Ironically, it was discovered that the SCIRI representative, DG of Legal Issues, was himself an ex-felon and embezzler who had been arrested before (interview with the HNDBC advisor June 9, 2010). Abdel Aziz Al-Wandawi (DG of Information) and Mithal Al-Alusi (DG of Culture and Media) were appointed because they were Sunni. It was accepted that there should be a balance in the ethnic composition of the commission just to show that the goal is de-Ba‘thification not de-Sunnification (interview with the HNDBC advisor June 9, 2010). Nevertheless, both Al-Wandawi and Al-Alusi were removed from their positions. Al-Alusi after making a public visit to Israel lost his job for having relations with enemy states in late 2004. Al-Wandawi was removed from his position in March 2009 for “political reasons” and was deprived of all his retirement benefits.

After the commission was established, a competition for things like office space, supplies, and who got to hire whom began (interview with the HNDBC advisor June 9, 2010). When it came to hiring, each DG preferred to select his or her friends or family members as deputies or staff members over other persons. Mithal Al-Alusi, for example, appointed four of the individuals who had helped him to take over the Iraqi embassy in Berlin in December 2002 (interview with the HNDBC advisor June 9, 2010). Al-
Wandawi hired Nizar Methi Akrawi, who was his prison mate in Jordan during Saddam’s era (interview with the HNDBC advisor June 9, 2010). Despite the cronyism when the HNDBC initiated its work, there was not even a skeleton staff to effectively implement the de-Ba’thification program. Additionally, there was not enough equipment to collect and analyze information on Ba’th party members, and any equipment they had was not set up immediately (interview with the HNDBC advisor June 9, 2010). Also, most of the staff did not know how to use computers or the Internet (interview with Mithal Al-Alusi, December 16, 2010). Money for the de-Ba’thification commission was supposed to come from the dormant account of Iraqi intelligence service (Jihaz Al-Mukhabarat Al-A’ma). Interestingly, despite the lack of equipment, there was two to three million dollars waiting for the commission in this account. The HNDBC did not have access to these funds because the INC had handed the money over to the state (interview with the HNDBC advisor June 9, 2010).

The structure of the HNDBC was highly de-centralized. The national commission was in the green zone, but there were provincial commissions and committees in each ministry. There were 200-220 employees of the commission in total (interview with Mithal Al-Alusi, December 16, 2010). The central de-Ba’thification commission would receive any complaint from any person, institution, organization, or ministry. For instance, if one wanted to betray his neighbor and accuse him for being Ba’th party member, he could get his message to the commission (interview with Rend Al-Rahim Francke September 7, 2011). The commission conducted an initial investigation and then made recommendations (interview with Mishkat Al-Moumin November 19, 2010;
interview with Rend Al-Rahim Francke September 7, 2011). The provincial commissions functioned like an employment agency; they were in charge of providing all of the necessary paperwork and connecting with the central commission in Baghdad (interview with HNDBC advisor October 12, 2012). Alaa Al-Tamimi, former mayor of Baghdad, explained how the committees within the ministries worked, “they were established to deal with individuals on a case-by-case basis. They asked questions such as ‘What is your position,’ ‘What is your rank,’ ‘What had happened’ and then give the recommendation to the minister stating either ‘Yes purge him’ or ‘Retire him’ or ‘False, he was not Ba’athist’ or “Yes he is Ba’athist but we need him” (interview with Alaa Al-Tamimi February 2, 2011). Even though Alaa Al-Tamimi believed that “this approach [de-centralized structure] gave a better professional opinion, that is not confounded and directed by a hidden political agenda” (interview with Alaa Al-Tamimi February 2, 2011), the CPA had difficulties in overseeing de-Ba’thification process. Scott Carpenter explained how the oversight process got complicated,

We [CPA] did not have the ability to provide adequate oversight. We were thinking of this as a national de-Ba’thification commission, and the national de-Ba’thification commission went to immediately establish provincial de-Ba’thification commissions…The constitution of those bodies or who made up those bodies and how they made decisions and how the appeals process worked was all unclear…we had our senior foreign officer who would spend most of his day over there trying to get information on what was going on and who was doing what. Almost every day he would come back saying they were exceeding their power…It lacked transparency, I could not figure out what was going on. I would go over there, and I would meet the leadership to the council try to understand. We had these mechanisms, but they were insufficiently developed. We did not have enough personnel to track this, especially after this was delegated [to the Iraqis] why would we? So it was very difficult to collect information on what was actually happening through the country (interview with Scott Carpenter October 27, 2010).
In Memorandum #7, it was clarified that the HNDBC would provide monthly reports to the CPA Administrator. These reports should include a full list of individuals those who were dismissed from their position of employment as well as those who were hired to replace dismissed employees. Bremer complained that the HNDBC did not provide monthly reports, and they broadened the implementation without any consultation with the CPA.

The limits of the commission and how it would enforce implementation of its decisions were unclear (Sissons and Al-Saiedi 2013). There was no transparency in the commission’s decisions. Rend Al-Rahim Francke claimed that documents were inaccessible to anyone who was outside the commission and nobody had the power to assess the commission’s work (interview with Rend Al-Rahim Francke September 7, 2011). Hence, corruption became inevitable. As Laith Kubba, a participant in the FoIS and later a senior advisor to Iraqi PM al-Ja’fari, explicated, “many used de-Ba’thification to blackmail people: ‘I can get you out of it if you pay me so many thousand dollars.’ I know people who paid. Those were real practices; they took place” (interview with Laith Kubba October 10, 2012). De-Ba’thification under the control of Ahmed Chalabi went beyond its scope and fueled a sectarian divide between Sunnis and Shi`is, which eventually led to civil war.

In 2004, Paul Bremer stated that de-Ba’thification was applied “unevenly and unfairly,” and asked to reverse the course of de-Ba’thification. Nevertheless many Iraqis especially Shi`is were not happy and felt betrayed by the U.S. and especially by Bremer (interview with Iraqi translator March 17, 2011). Bremer told me that he tried to contact
with Ahmed Chalabi via letter and asked him to stop the de-Ba’thification process, but he was never successful (interview with Paul Bremer November 29, 2010). In a Fox News interview Chalabi responded Bremer’s call for reversing de-Ba’thification as follows:

First of all, the Iraqi people will reject entirely the participation of senior Baathists and those who have committed crimes in the government of Iraq at any level, and especially at the high level of government. But I want to clarify that Ambassador Bremer has not changed the de-Baathification policy. What he announced is an agreement with the de-Baathification Commission and the Governing Council. We came to an agreement that we must speed up the appeals process. And that's all we said. Today, he sent a letter to the Governing Council. Ambassador Bremer said in his letter that there is no change in the de-Baathification policy of the CPA and, in fact, the commitment to the de-Baathification is stronger than ever. And the Governing Council also issued a statement confirming this and saying that we are in agreement with Ambassador Bremer (Fox News interview with Ahmed Chalabi April 25, 2004).

Instead of continuing to pressure the commission to provide necessary reports and reverse the course of de-Ba’thification, Bremer argued that he tried to disassociate the CPA from the HNDBC (interview with Paul Bremer November 29, 2010). Paul Hughes used the word “sickening” to describe the whole process and explained,

the IGC was not an authoritative body, they were an advisory body to him [Bremer]. And, if they [CPA] were allowing Chalabi…to go to do this kind of stuff, then he [Bremer] as the administrator is guilty of ceding away his authority. He [Bremer] had the responsibility and authority but he chose not to use it (interview with Paul Hughes November 9, 2010).

From 2004 to 2008, the HNDBC faced several challenges and changes. First, after Paul Bremer’s criticism and the announcement of re-Ba’thification process, the commission was faced with opposition from the interim government under the control of Ayad Allawi. Allawi, a former Ba’thist himself, was critical of the commission’s work. He was concerned about the expanding scope of de-Ba’thification. Second, even though the government’s legal counsel (the Shura Council) affirmed the commission’s legality
and legitimacy, its power was curbed (Sissons and Al-Saiedi 2013, 14). The government cancelled the credentials of some HNDBC staff, cut the commission’s funding and forced the commission to move its offices (Sissons and Al-Saiedi 2013, 14). Third, after the 2005 elections, Allawi lost his power and the commission’s power was reinforced. De-Ba’thification provisions were secured under the new constitution. Article 7 of the constitution banned the Ba’th party and the Article 135 reinstated the power of the HNDBC as an independent commission. However, Article 135 put the HNDBC under the control of the Council of Representatives and stated,

Council of Representatives shall form a parliamentary committee from among its members to monitor and review the executive procedures of the Higher Commission for De-Ba’thification and state institutions to guarantee justice, objectivity, and transparency and to examine their consistency with the laws. The committee’s decisions shall be subject to the approval of the Council of Representatives (Iraqi Constitution, Article 135, Section 6).

Finally, in 2008 the Iraqi parliament passed the Law of the Supreme National Commission for Accountability and Justice (qanun al-musa’ala wa al-adala). With this law the HNDBC was dissolved and the AJC was established to undertake its functions. This law aimed to change the structure of the corrupt and highly politicized HNDBC, reverse the de-Ba’thification measures, and most importantly to balance the needs of Sunnis and Shi’is. The new commission did not achieve any of these goals and even, extended the reach of de-Ba’thification.

Ahmed Chalabi remained as Chairman and Ali Faisal Al-Lami as Executive Director of this new commission. Other members of the AJC were selected from those who hated the Ba’thists or who had deep personal antipathy to the Ba’th party, which signaled that like HNDBC, the AJC was infused with ideological bias and a desire for
revenge (interview with Ali Allawi May 21, 2010; interview with Kanan Makiya October 27, 2010; interview with Alaa Al-Tamimi February 2, 2011). Like its predecessor, the AJC could charge people for being Ba’thists without even producing the necessary documents. When they produced documents, they were mostly incomplete and the criterion for purging was arbitrary (interview with Kanan Makiya October 27, 2010). “They are like a dark horse sitting in the background, which picks and chooses people and suddenly labels them…Nobody knows how the AJC makes its decisions, not even the Prime Minister. They just operate as people who can throw dark at anybody that they do not like and pull out the documents to target them” (interview with Kanan Makiya October 27, 2010).

The AJC was also highly politicized like its predecessor. Over the course of March 7, 2010 parliamentary elections, the AJC proposed to disqualify 511 candidates. Like during general election of December 15, 2005, both the chairman Chalabi and the executive director Al-Lami were electoral candidates in 2010 elections. They used their power to satisfy their political ambitions. As Kanan Makiya explained,

the commission used de-Ba’thification like McCarthy’s fear campaign, strictly as a political tool to use against people for short-term political gains….even the senior politicians were highjacked by the Commission during the election campaign. Many of them did not say anything during the campaign because they did want to be seen as being soft on Ba’thists during the election time…Many of them kept quiet, but privately told me that they were against what the de-Ba’thification Commission was doing…the commission tried to derail the elections…and raised the fears on the return of the Baath party (interview with Kanan Makiya October 27, 2010).

Rather than reversing the course of de-Ba’thification, the AJC broadened it and exaggerated the sectarian divide within the country. De-Ba’thification remained a
politicized, vengeful, corrupt and opaque de-Sunnification process. Yet, the price of these extreme de-Ba’thification strategies for both HNDBC and AJC was extremely high. Since the establishment of HNDBC, many of its members were murdered and abducted by insurgents. In May 2011, the Executive Director of AJC Al-Lami was assassinated.

The ad hoc mechanisms that were established to implement de-Ba’thification got partial, corrupt and politicized. The administrative staff of the commissions was composed of untrustworthy political figures who hired their staff based on cronyism and political favoritism just like Saddam Hussein’s Ba’th Party. Because of the lack of transparency in how the process was implemented and the limitless power of the commissions, de-Ba’thification became a massive tool for revenge. These developments not only prevented democratic transition but also undermined many of the other rationales. As the critiques anticipated, the work of de-Ba’thification commissions prevented political stability and reconciliation. With the intensified insurgency, neither U.S. officials nor Iraqi elite averted a Ba’thist revival. Moreover, how the commission staff was selected confirmed that establishing meritocracy was nothing but a delusion.

5.3.3 Dismissals, Exemptions, Reinstatements, Appeal, and Pensions

Potential sanctions of de-Ba’thification were clearly stated in the CPA orders and memorandums. As explained in the CPA Order #1, all employees who were in the top four echelons of the Party or full party members in the top three tiers of ministry management were to be removed from their posts and banned from future employment in the public sector permanently. Those who were associated with the Ba’th party at a level below full member and those who were full members with occupation below top three
levels of the ministries or other public institutions were to retain their jobs in public sector. Hence, Order #1 proposed an extensive review process.

Memorandum #1 set down a process in order to have these sanctions applied. Until the administration of de-Ba’thification was transferred to Iraqis, U.S. civilian investigators conducted necessary investigations in order to determine person’s affiliation with the Ba’th party. After a thorough review process, the investigator would make a factual finding about the Ba’th membership of the individual and give information regarding the appeals process. Appeals were to be heard by the ARCs. These committees were to contain one military officer and two civilian members (one of whom would be an Iraqi) and would continue their work until the Iraqis adopted their own government. These committees would also have power to grant or deny requests for exception that would be prepared by the investigators. They would consider all available information, including whether the individual is willing to denounce the Ba’th party and his/her affiliation, was a full party member, had exceptional educational qualifications, left the Ba’th party before April 16, 2003, continued to command the support of his or her colleagues and respect of his or her subordinates, was judged to be indispensable to achieving important Coalition interests, and/or could demonstrate that s/he joined the party to hold a job or support a family. Even though the ARCs were to have extensive power to hear appeals and deny or grant exemptions, the CPA Administrator would supervise their decisions.

After the administration of de-Ba’thification was transferred to IGC, the details of the sanctions were explained in Memorandum #7. Any citizen who was dismissed from
his or her position should be entitled to:

- advance written notification explaining the grounds for dismissal and the procedures for appealing that dismissal;
- a reasonable opportunity to respond to the notification in writing or in person and present evidence; and
- a reasonable opportunity to appeal immediately any adverse decision, in writing or in person, to a fair and impartial entity independent of the individual or organization that rendered the adverse decision, which shall promptly render a written decision in the case.

The result of an appeals process would be either denial or reinstatement. If the employee’s appeal was denied, he or she could request for further review of the matter by the HNDBC. If an appeal resulted in an employee’s reinstatement, the employee should receive back pay retroactive to the date he was dismissed. As stated in Memorandum #7, Paul Bremer retained the right to reinstate an employee “if he concludes that it is in the interest of the Iraqi people or that failing to reinstate the employee would be fundamentally unfair” (CPA Memorandum #7).

Moreover, CPA Order #2 proposed a dissolution and reappointment process and clarified the sanctions against the employees of the dissolved entities. Any rank, title, or status granted to a former employee or functionary of a dissolved entity was cancelled and conscriptions were suspended indefinitely. Any individual who worked in these entities was dismissed and remained accountable for acts they committed during their employment. Termination payment was to be given to those persons who were not senior members of the Ba’th party. Those who were receiving pension payments before May 16, 2003, including war widows and disabled veterans would continue to be paid unless they were senior members of the party. Individuals who provided information leading to the recovery of assets of the dissolved entities would be rewarded. This order also gave
discretion to Paul Bremer to grant exemptions to those who were removed from their posts.

Even though CPA orders and memorandums and later IGC decisions provided some information regarding the sanctions applied to those who were de-Ba’thified, sanctions and procedures remained vague. In order to establish a clear and transparent framework, the Accountability and Justice Law introduced five principles. These included:

1. Individuals who were at the level of `udhu firqa are permitted to return government service except if they hold the highest civil service positions and positions in certain sensitive ministries, the Supreme Judicial Council, and key leadership offices.
2. Most individuals dismissed are now eligible for pensions except those at the four highest levels of party membership, former members of the notorious paramilitary units, the Feda’iyeen Saddam, and individuals proven to have been corrupt or committed crimes.
3. All former employees of Ba’th-era security intelligence agencies must now be dismissed from government employment and pensioned off, regardless of whether they were party members.
4. If an individual belongs to a category of membership that would benefit from the new law but is convicted by a court of having committed crimes or embezzled public funds, then he or she will forfeit their pension and/or return rights. The new Commission will have a public prosecutor’s office investigate alleged crimes.
5. The new system also attempts to create an independent appeals mechanism, called the Cassation Chamber. Individuals who have steps taken against them are able to appeal the Commission’s decision to a panel of seven judges. Panel members will be nominated by the Supreme Judicial Council and crucially, the panel will function as a part of Iraq’s Cassation Court – it will not be housed in, or answerable to, the Commission (Sissons 2008, 6-7).

This new system provided an independent appeals mechanism where individuals who appealed did not need to give up their right to a pension and lose their positions immediately. Instead individuals were to be placed on paid leave until the appeals process ended (Sissons 2008, 7). However, it did not change the process of exemptions and
reinstatements other than making them more difficult to obtain (Sissons 2008, 12).

When it came to implementation, the criteria for exemptions, reinstatements, pensions, and due process procedures were not transparent. Exemptions and reinstatements were appeared arbitrary. Those who pledged fealty to the Ba’th party now had to renounce it to get their jobs back (Ghanim 2011, 68). Appeals processes were biased and pensions were not administered as they were designed. Under the CPA, Bremer approved exemptions when necessary. His approval was conditioned upon “whether the absence of this person will cause a severe problem” (interview with Paul Bremer November 29, 2010). He explained, “I approved at least a hundred exceptions…in the time period until we handed it over to HNDBC. Basically…I remember something like five people in the Ministry of Oil including seniors, advisors and the minister himself were the technical people…which meant that we cannot run the pipelines, oilfields without them. So I said ‘Fine, Keep them!’” (interview with Paul Bremer November 29, 2010). Similarly, an Iraqi lawyer recalled, “Amb. Bremer started giving exemptions to a lot of key people in the Iraqi administration. I recall somebody working in the Ministry of Finance who was in charge of Iraqi budget for the next 30 years. He was Ba’thist, but Amb. Bremer gave him an exemption, because he knew how to put the budgets together for the state” (interview with Iraqi lawyer June 4, 2010). Bremer granted exemptions to most of the applicants. This was a critical strategy for the CPA to show that de-Ba’thification was not based on collective guilt, and it was not an ironclad process (interview with Frederick C. Smith November 10, 2010; interview with Douglas Feith November 29, 2010). Yet, some CPA officials were critical of exemptions.
Scott Carpenter explained why he felt uncomfortable with exemptions,

One of the reasons why I was very uncomfortable with this was that how someone can be that essential. What happened was that a senior ministry advisor…who was working in a particular ministry…put forward an affidavit signed by this person [alleged Ba’thist]…He denounced the Ba’th party and his affiliation with it and…explained the rationale why he joined the party and then the senior advisor [at the CPA] had to make a strong case for why this person was absolutely critical for the continuing functioning of the ministry. And having worked in the government, I have not thought anyone was more essential in the bureau than somebody else…There was a big file…submitted to the only person who can make the decision, Ambassador Bremer (interview with Scott Carpenter October 27, 2010).

The ICTJ’s recent case study on the Ministry of Finance between 2003-2006 shows that the exemptions procedure was very complicated and required a lot of documentation (Sissons and Al-Saiedi 2013, 28). Individuals who asked for exemptions were asked to provide some forms and documents including, a resume, bank account information, full list of party ranks obtained so far, “declaration of regret for their former party membership, pledge not to return to its ranks or thoughts, not to praise it, and to supply a certificate signed by the head of their former department and five additional coworkers confirming that they had been an ‘obedient and disciplined employee’ and enjoyed ‘a good social reputation and did not commit any action or crime against the sons of the people’” (Sissons and Al-Saiedi 2013, 28). Drew Erdmann, CPA advisor at the Ministry of Higher Education and Scientific Research, shared his experience with regard to providing necessary information for exemption application, “we [the ministry advisors] had to collect personal data and submit an official memorandum to Ambassador Bremer that said, in effect, ‘as senior advisor, I am requesting these officials be exempted from the de-Ba’thification order to ensure the functioning of the ministry's
essential operations’” (interview with Drew Erdmann November 2, 2012). He also explained what happened in the meantime,

While the exemption was being processed, an individual [assuming he was a university professor] could continue to do his work informally as a volunteer not paid employee, with the consent of the new university president. For instance, if he were a scientist, he could continue to run his lab, but he could not collect a paycheck. So some university presidents allowed a few such volunteers in the universities. They were not paid and they were not officially faculty anymore in accordance with De-Ba'thification order, but they were volunteering. In theory, such an individual—who was trusted by the community and chose to continue doing his work without pay—might be viewed favorable especially when he was reviewed for his exemption. They continued to be a part of the academic community while being compliant with the order and while waiting for their exemptions or other processes to move forward (interview with Drew Erdmann November 2, 2012).

Nevertheless, in some ministries, those who applied for exemptions had to be fired first. As David Dunford criticized, “Most of us thought, that would allow us to keep people we thought were very useful. But the exceptions procedure, Bremer insisted that he do it himself. He insisted that anybody for whom we were applying for an exception be first fired and then, if possible, later brought back. Both I and some of my colleagues didn’t totally honor that. It was a pretty tough policy” (USIP interview with David Dunford August 25, 2004).

Under the administration of the HNDBC, exemptions continued to be given inconsistently and randomly. The HNDBC advisor told me how he gave exemptions,

…if you could not find evidence that he [alleged Ba’thist] damaged the people, you gave him an exemption. I’ll give you an example of one exemption that I gave, which was to Sami Al-Araji. He was the Director General with a special rank. It was called Special Status in the Ministry of Industry. He was a very capable guy…educated in the US…because of family contacts and because he was from Kadhimiyyah, it was easier for me to get information about his background. He did not seem like he hurt people and I gave him an exemption. Today, he is the head of the Investment Board of Iraq…
In another instance, he recalled,

The first province, which sent us a big request for *istisna* [exception]...was Mosul. They sent us a big stack of ...twelve hundred to fifteen hundred files of people who were applying for *istisna* and at the time we did not even have the skeleton staff in the commission to do any work. We were still setting up the computers. So, I remember sitting there and going through the stack. I was giving on the spot *istisna* to anybody who was just a teacher... I was also trying to divide it equally between the various components of Mosul, which were Yazidis, Christians, Kurds, and Shebeks from the various families. For example, if I had ten requests from a single Muslim family, one of the prominent families, let’s say Al-Amin, I was immediately giving *istisna* for six or seven of them. Four or three would be studied for later...I was just giving the idea to the people of Mosul that de-Ba’thification was actually working... It was not a real process, but you had to act quickly (interview with the HNDBC advisor June 9, 2010).

Even though exemptions were given randomly, many Sunnis believed that exemptions were only granted to Shi’is. As explained in a *Washington Post* article, the head of the Iraqi National Dialogue Council, a Sunni group that represents many ex-Ba’thists, Khalaf al-Elayan argued that exceptions were only given to one side, “If you were a Shia Baathist, you could return. If you were a Sunni Baathist, you could not.” (cited in Paley and Partlow January 23, 2008). Also,

Abu Saif, a Sunni ex-Baathist division member who spoke on condition that only his nickname be used, said he applied to the commission 15 months ago to return to his job as a brigadier general at the Defense Ministry. The 55-year-old resident of the capital's Dora district lost his job after Bremer's original order and has been unemployed for most of the years since. Abu Saif said he has yet to receive any response from the commission. “I think they are filled with corruption and sectarianism,” he said. He plans to reapply under the new law [Accountability and Justice] and hopes he can return to his $17,000-a-year job. Still, he is wary (cited in Paley and Partlow January 23, 2008).

Moreover, there were many allegations that the commission granted exemptions only to those who paid for their way out and those who had good connections in the new system (interview with Ali Allawi May 21, 2010; interview with Iraqi lawyer June 4,
As a CPA translator explained, “If you have money, you would get an exemption; it does not matter whether you were Ba’thi or still are a Ba’thi… For instance, the [former] Minister of Electricity Karim Wahid Al-Hasan was Baathi and he was the last person who left the party building in his town. He is OK now. Why? Because he had support and money. So, yes, there were exceptions given, but they were not fair” (interview with CPA translator October 17, 2010).

How the reinstatement process worked and what were the criteria for reinstatements were as unclear as the exemptions process. Some reinstatement requests were canceled and some were accepted without clear explanations; some employees were reinstated, but notified later or did not receive their back pay (Sissons and Al-Saiedi 2013, 28). Yet, during my interview with Mithal Al-Alusi, he argued that in 2004, the HNDBC tried its best to reinstate and reintegrate a lot of former Ba’thists despite many challenges. He recollected,

we did organize huge number courses in Mosul, Anbar, Salahaddin, Baghdad, in the south and those courses were for Ba’thists. When they finished the course, they got their certificate. That was a collegial bridge to integrate them to the society without looking their pasts or histories…By September 2004, we had received just 15,000 Ba’thists who wanted to go back to the system. Many of the Ba’thists did not want to come back to the system, because the salaries were so low. After the salaries in Iraq…went up, they wanted to come back. And they started saying ‘They did not want us, because we were Ba’thists.’ This was not the issue (interview with Mithal Al-Alusi December 16, 2010).

Like exemptions and reinstatements, the appeals process was vague. First, individuals who were dismissed did not always receive their dismissal orders; they learned of their dismissals when they collected their “last” paychecks (Sissons and Al-
Saiedi 2013, 27). Second, they were not given any information regarding the appeals process (Sissons and Al-Saiedi 2013, 27). Given those circumstances many either accepted their dismissals and waited for reinstatement or applied for exemptions (Sissons and Al-Saiedi 2013, 27). As Rend Al-Rahim Francke summed up,

I remember in 2004 and 2005, a lot of people thought of appeal and … people came up to me and asked for my help…They said they went to the commission but could not get through anyone. They said they did not get our papers [necessary paperwork for appeal application]. The procedure was unimaginably convoluted. I could not do anything” (interview with Rend Al-Rahim Francke September 7, 2011).

Even though Scott Carpenter argued that there existed clear mechanisms for due process, the system was never set up (interview with Scott Carpenter October 27, 2010). Feisal Istrabadi explained that “At the time of the CPA, I never heard anybody following the appeals, but if they did, I did not hear about it and certainly it was not publicized…It was seen as the foreign occupier de-Ba’thifying you or put you out. And you had no recourse” (interview with Feisal Istrabadi September 14, 2011). Under the HNDBC, Mithal Al-Alusi explained there was no decision on how to further the appeals process and recollected, “I was the first employee of the commission sitting there in the big building and do not know what to do. What should I do? People in our structure [HNDBC] we did not know where to start, we needed time” (interview with Mithal Al-Alusi December 16, 2010). The HNDBC rather than an independent court tried to administer the appeals process. Alaa Al-Tamimi claimed that since “the decision comes from the commission and the appeal goes through the commission not through the court…it was pointless to do so…the commission is not neutral; it is composed of people who had a political agenda, and were not independent in judgment” (interview with Alaa Al-Tamimi February 2,
2011). Thus, the appeals process quickly became fraudulent (interview with Alaa Al-Tamimi February 2, 2011).

The distribution of pensions was also fishy. Although an HNDBC advisor, Nibras Kazimi, wrote in his blog that even members of Feda’iyeen Saddam got their pensions, this was not how most of the interviewees described the process (Nibras Kazimi, Talisman Gate, comment posted January 23, 2008). Throughout my interviews, I have learned that: First, many who applied for appeals had to give up their right to pension. Second, military personnel who had a right to pension under Order #2 did not receive their pensions. Third, even though under the Accountability and Justice Law, many had the right to pension, they did not receive their pensions. According to Feisal Istrabadi, preventing employees from receiving their pensions was an unfair move to begin with, because pensions were deductions from employees’ salaries (interview with Feisal Istrabadi September 14, 2011). Many de-Ba’thified employees especially the army officials who wanted to get their pensions organized demonstrations. They wanted their pensions and also their jobs back because they needed money to provide for themselves and their families (interview with Feisal Istrabadi, September 14, 2011; PBS interview with Rajiv Chandrasekaran August 9, 2006). When pensions were offered to these military officers, it was too late because they were already beginning to join the insurgency after U.S. soldiers shot and killed some of them during the demonstrations (interview with Paul Hughes November 9, 2010; interview with Feisal Istrabadi September 14, 2011).

The dismissals, exemptions, appeals, reinstatements and pensions were
administered arbitrarily behind closed doors. 28 out of 45 interviewees mentioned or discussed that de-Ba’thification process threw Ba’thists who should have been incorporated back into the society, into the hands of insurgents, terrorist organizations, or neighboring countries that wanted to benefit from Iraq’s security gap. As Roman David (2011, 232-234) argued, exclusive and wholesale dismissals cannot have any transformative potential especially in deeply divided and heterogeneous societies such as Iraq. He argued that Iraq should have had a reconciliatory process that provided former Ba’thists a chance to prove their significance by collaborating with the new system (David 2011 232-234). Another anticipated yet undesired consequence of these wholesale dismissals was humiliation and shame. Victoria Fontan observed that de-Ba’thification marginalized many former officials, and de-militarization stripped thousands of Iraqis’ *sharaf*—“nobility granted by their belonging to a political elite”—and led to collective humiliation and polarization of people (2009, 30).

5.3.4 When to Begin; When to End

Zena Jassim, an Iraqi student and CPA translator, remarked that the “CPA should have waited longer to have a feel of…Iraqi society and consulted well-educated middle class Iraqis…about the best de-Ba’thification strategies” (interview with Zena Jassim December 22, 2012). What really happened was on May 9, 2003, Undersecretary Feith showed the de-Ba’thification order to Paul Bremer, when Bremer was finishing up his preparation at the Pentagon. Bremer asked Feith to hold on to the order and wait for him to arrive in Baghdad before handing it to Jay Garner. No one could ever know what would have happened if Feith had given the order to Garner that day, but it was obvious
that Bremer wanted his arrival to have a huge impact and he was planning to achieve it through a far-reaching de-Ba’thification order. Neither the attitudes of the public nor the concerns of the ORHA officials were valued. Bremer argued that he consulted with the Iraqis about the desirability of de-Ba’thification, but the Iraqis that he consulted were the exiled Iraqis and opposition leaders who were motivated largely by revenge and greed.

The timing was perfect for Bremer, but not for Garner or most of the ORHA members who were using all their available information, resources, and personal judgments to re-establish Iraq’s ministries. Even though Bremer spent a few days discussing the timing of the issue with his close circle, he did not consult with the officers on the ground working to rebuild the public institutions. When I interviewed Bremer about the meeting that he had with his advisor before issuing the order, I told him that in his book, he cited a concern raised by Megan O’Sullivan. She said that a specific portion of the order—referring to one of the paragraphs in the order “the top three layers of management in every national government ministry and affiliated corporation and other government institution would be reviewed for possible connection to the Baath party”—is going to disappoint some of the ministry senior advisors who worked so closely with the managers of several ministries almost a month to rebuild the system (Bremer and McConnell 2006, 41). Then I asked him what he thought about this concern and whether he seriously considered it. He replied, “she [O’Sullivan] was basically saying that it’s going to make some of the advisors unhappy. And my review was ‘it may be’ but that was the policy” (interview with Paul Bremer November 29, 2010). This statement indicates that he was determined to issue the order no matter what. He explained how
these concerns were even irrelevant, “interestingly, two days later…the most the senior advisors reported to me in a memo, which I have somewhere here, saying we were happily surprised. The de-Ba’thification decree was strongly welcomed by the people in our ministries and the senior advisors were pleasantly surprised to find things are going fine” (interview with Paul Bremer November 29, 2010).

While the ORHA advisors in the field were trying to re-establish public institutions and to figure out how to incorporate de-Ba’thification into their work, the second order—the dissolution of entities—created a huge shock. Walter Slocombe defended this order,

I assume you know our side of the story [Wolfowitz, Feith, and Bremer] which is we did not dissolve the army. The army dissolved itself. All of the facilities were destroyed and in any case it was essentially a conscript army and given the nature of the society almost all the conscripts were Shia, while the officers were Sunni though of course there were some exceptions. So the idea that you sometimes hear that CPA just had to have some Iraqi Generals, wave a flag and everybody from the old ranks would come rallying to the cause is ridiculous. And furthermore the Army was an immensely political element in the old system. It is true that the old army was not fully a Ba’thist institution; that it was not fully trusted by Saddam. But it is also true that it was very much a Sunni institution, and Sunni institutions were not trusted by the Kurds or the Shia (interview with Walter B. Slocombe September, 23, 2010).

This statement showed that the second order also aimed to balance the interests of both the Kurds and Shi‘i with the Sunnis. However, Ahmed Chalabi, who also defended the CPA Order #2, presented a different perspective regarding the composition of the army. In an interview conducted by the Middle East Quarterly, he argued,

When Bremer issued the order to disband the army there was no army. There were no barracks, no equipment, and no stores. Everything had been looted, and the soldiers had gone home. He simply issued a death certificate to a dead man. The Iraqi army was mostly made up of Shi‘ite conscripts. They hated the army and took the first opportunity to go home. To bring them back and force them to
serve in the institution they hated under officers who abused them would have been counterproductive (*Middle East Quarterly* interview with Ahmed Chalabi, 2004).

Even though there was some confusion on the structure of the army, there was a general belief that army had already dissolved itself. However, the other side of this story was that the order shocked those on the ground and the timing was horrible. Feisal Istrabadi furiously rejected the argument that the army dissolved itself. He said, “No! They started to re-form…even the U.S. army was in the negotiations with the senior officers about the return of the regular army” (interview with Feisal Istrabadi September 14, 2011).

Paul Hughes was one of those senior officers. He recalled the day he talked to Jay Garner about these negotiations,

> It was a group of seven officers [Iraqis] ranging from major general down to lieutenant colonel… what motivated them was that $20. They had heard that employees of the federal government were getting $20, so these guys came out and said, ‘we want to make sure that soldiers and civilians are getting their $20 too. How do we do this?’… They had the ability to reach out across other major cities for similar groups we were forming, and they started to bring in names and the papers that soldiers had to fill out with their background and their history and unit, if they wanted the $20. We eventually round up with a list of a 136,000 names, these were sergeants, privates, a lot of officers that all wanted to come over to us because they had that money. They had no allegiance to Ba’th party and no allegiance to Saddam. They wanted to ensure their survival (interview with Paul Hughes November 9, 2010).

Paul Hughes argued that these soldiers, after the order, joined the insurgency, because their major concern was money and the insurgents had the money. Feisal Istrabadi harshly criticized the timing of the order, “they [soldiers] could have been used to provide security in the cities…when you disband 750,000 people you are finished…these people who did not know how to put food on the table tomorrow…also
the order left Iraq in the middle of countries such as Turkey, Iran, Saudi Arabia and Syria. They are not Liechtenstein and Switzerland…. [The] army could have been used to protect the borders…. It was a disastrous mistake” (interview with Feisal Istrabadi September 14, 2011). The US lost its chance to use the Iraqi soldiers for its own benefit and the worst part was, it pushed these well-equipped, highly-trained and starved soldiers into the arms of the insurgency.

Paul Hughes sarcastically criticized how the order was discussed,

Walt Slocombe wrote an op-ed in 2005 or 2006, in which he describes how the decision to disband the Iraqi military was made. It was made in Doug Feith and Paul Wolfowitz’s office on the 9th of May 2003 between Wolfowitz, Feith, Bremer and Slocombe. And somebody, according to Slocombe, said ‘what about the Iraqi military? Do we need to disband them?’ Nobody gave a reply, which basically provided a tacit approval for disbanding the Iraqi military. Bremer, as I understand it, had Slocombe come to Iraq and travel around and talk to the division commanders and ask them with they have a problem with the disbanding of the Iraqi military. The generals said that would be a problem for us. You can do it but you have got to establish the new Iraqi military right away you cannot have a delay, the delay would be fatal. The message that came back to Bremer allegedly is that Slocombe said, ‘generals are on board they do not mind, it is Ok to disband the Iraqi military.’ And so it was disbanded, the thing that Bremer was never not told by Slocombe that the generals said you better re-establish the Iraqi army right away (interview with Paul Hughes November 9, 2010).

He also added,

When Bremer wrote his Order #2 originally it included the police and Jay Garner when he saw that he went in and told Bremer that “you cannot do that we got these guys back they are doing some work for us now, you got to have the police” so Bremer modified it so that the police who are got back can stay but he said there is nothing else we can do about the military even though Jay Garner was telling him that this is a stupid idea. We knew this was going to feed in the insurgency, but nobody asked us, even though we were the ones who were supposed be responsible for this stuff on the ground. Again this was a poorly planned operation; not well-rehearsed or coordinated (interview with Paul Hughes November 9, 2010).

When to end the ongoing de-Ba’thification process is still unknown despite many
criticisms. There was no pre-determined deadline for this process. Since a lot of people are pursuing their political agendas, it seems like there won’t be one in the near future. Also, the inconsistent implementation made putting a firm time limit on de-Ba’thification extremely difficult (interview with CPA official November 10, 2010). Yet, a transitional justice mechanism cannot be a transitional justice mechanism if it is utilized forever. Kanan Makiya suggested,

there should be a time limit...a period of measures that were applied to... Ba’thists should also be temporary. If you say the senior Ba’th member such and such cannot enter the parliament or cannot be a governor...for a period of five to ten years after the change...this sends a signal that a change has taken place and...the very influential... Ba’this cannot help to shape the new policy.... That is important (interview with Kanan Makiya October 27, 2010).

Likewise, Scott Carpenter analyzed the process,

I think that a new political equilibrium in Iraq has to take place as it had happened in Germany and elsewhere, where the society comes to terms with its past and believed that the time to end the process has come. I think that one of the first clues that is going to happen will be when the political leadership, whoever constitutes the government, makes the decision to take the de-Ba’thification process out of political hands. That would begin to signal that the passion that surrounds the de-Ba’thification issue is dying off to the extent that you can look at the process rationally and through the administrative justice lenses. Right now, I think that the wounds are too deep in Iraq that this paranoia about of the return of the Ba’th party is very real. While it remains constant, I think there will be abuses of the political system to ensure that no Ba’thist whether real or imagined is able to participate in any significant way in political establishment, military establishment, in the intelligence establishment or in any ministry (interview with Scott Carpenter October 27, 2010).

If as explained in the literature, timing and duration truly affect the general perception and understanding of any vetting program’s rationale, it is evident why many ordinary Iraqis are critical towards de-Ba’thification process. Having an official and limitless de-Ba’thification process when ORHA officials are already in the field working to have the
country up and running is a massive design flaw that leads to several disastrous consequences, which will be discussed later in the chapter.

5.3.5 De-Ba‘thification and the Iraqi High Tribunal

In December 2003, the CPA authorized the IGC with CPA Order #48 to establish an “Iraqi Special Tribunal” (IST) to try Iraqis accused of “genocide, crimes against humanity, war crimes or violations of certain Iraqi laws.” The IGC appointed the nephew of Ahmed Chalabi, Salem Chalabi as the first Director General of this tribunal. Article 33, Section 10 of the IST statute required that “No person who was previously a member of the disbanded Ba‘th Party shall be appointed as a judge, investigative judge, public prosecutor, an employee or any of the personnel of the Court.” This article was harsher than original de-Ba‘thification procedures because it did not restrict its focus to high-level party members (Sissons and Bassin 2007, 277). There was no relationship between the Iraqi High Tribunal (IHT) and the HNDBC until 2005. But after June 2005 the HNDBC repeatedly interfered in judicial appointments at the IHT. The chief investigative judge of the Iraqi High Tribunal, Raid Juhi Al-Saedi explained,

They [HNDBC] threatened some of the judges including myself. They told us that because we had Ba‘thist backgrounds, they would fire us. Some of us were lower-level in the party structure or had no role in the party. We told them that they cannot use de-Ba‘thification against us, but they responded, “We do not use our law against Iraqi High Tribunal. We use Article 33 of the IHT statute.” Then, we told them that they had no jurisdiction over IHT because the IHT was independent and the only one had jurisdiction over the tribunal was the president of the

29 The Iraqi Special Tribunal was renamed in 2005 after the Iraqi constitution stated that special courts couldn’t be established. The Iraqi Special Tribunal became Iraqi High Tribunal or Supreme Iraqi Criminal Tribunal.
tribunal. But…they fired 18-19 employees including judges and administrative staff from the IHT. They did not stop there (interview with Raid Juhi Al-Saedi June 11, 2010).

The judges maintained their positions, but the administrative staff were dismissed (Sissons and Bassin 2007, 278). Another attempt was made in January 2006. “The Commission orchestrated the removal of Judge Sa’id al-Hammashi from Trial Chamber One…just as he appeared likely to assume the role of presiding judge” (Sissons and Bassin 2007, 278). Finally in October 2006, the HNDBC threatened four tribunal judges and told them that “they would be given the opportunity to apply for transfers rather than face the public humiliation of de-Ba’tification” (Sissons and Bassin 2007, 278). This final wave of de-Ba’tification of the IHT judges occurred just before the Dujail trial (the trial of Saddam Hussein) judgment was being finalized. As a result one member of the cassation chamber was replaced, other judges modified their behaviors, and Saddam Hussein’s death penalty was assured (Sissons and Bassin 2007, 278; Sissons and Al-Saiedi 2013, 27).

This relationship between the IHT and HNDBC was a great example of how one transitional justice mechanism can impede the functioning of another transitional justice mechanism within a post-conflict society. Also, it showed the politicized and selective application of de-Ba’tification measures as well as the lack of clarity with regard to the commission’s executive and enforcement powers (Sissons and Al-Saiedi 2013, 16).
5.4 Consequences: “It was a necessary surgery, but the patient died.”

Inconsistencies in the design and implementation of de-Ba’thification and its politicization very early in the process showed that none of the rationales presented in Chapter 4 were reflected in the design and implementation of de-Ba’thification. Democratic transition, reconciliation, and normalization could not be achieved. Although de-Ba’thification was a popular policy among Shi`is and Kurds in Iraq, even they did not anticipate such an inconsistent implementation. Almost all of the interviews I conducted ended with this comment: “[the] idea was good, but the implementation failed.” In addition, many still believe that some members of Ba`th party were never affected by de-Ba’thification and 20 out of 32 Iraqis I intervieweed mentioned that this broke Iraqis’ trust in U.S. leadership. As the critiques anticipated, de-Ba’thification did not balance the interests of Kurds and Shi`is against Sunnis. Instead, de-Ba’thification alienated and de-humanized Sunnis. 27 Iraqi interviewees started using the word de-Sunnification to describe the de-Ba’thification process during the interview process. Also, almost all Shi`i and Kurdish interviewees mentioned that re-integration of Ba`thists and politicization of implementation led to mistrust against U.S. administration. Today, political parties of Iraq have the same mentality as the Ba`th party. De-Ba`thification did not remove Ba`thist ideology from the Iraqi system rather it instilled a similar thinking that fostered the sectarian divide, which the majority of ordinary Iraqis I interviewed think more dangerous than Ba`thism.

30 interview with CPA translator October 17, 2010.
Moreover, preventing a revenge campaign against Ba’thists and incorporating them back into the society was just empty rhetoric. Unofficial de-Ba’thification and the shame that the process brought about made many Ba’thists suffer. Although there were some successful attempts at reintegration and rehabilitation, nothing was systematic. For instance, de-Ba’thified Sunnis from Anbar, also known as The Sons of Iraq or the Awakening movement, got mobilized and joined the insurgency. They later allied with the U.S. and this might have been seen as one of the greatest examples of reintegration of Ba’thists. However, there is no guarantee that these militias won’t organize against U.S. or against the new system in Iraq in the near future. Instead of preventing a possible Ba’thist revival, de-Ba’thification, especially through the dismantling of the military, led to a massive security gap and eventually the insurgency. This section details these and other undesired consequences of de-Ba’thification.

Many of the interviewees mentioned that before the de-Ba’thification order, the separation between Sunni or Shi’i was not as visible as it is today. Even though Saddam Hussein’s policies discriminated against many Shi’i and Kurds, Iraqis were not discriminating against one another. As one Iraqi intellectual explained, “I have a mixed family; I have Sunni and Shi’is in my family. We were living peacefully all together…even Jews and Christians…We had jokes about being how interethnic and how peaceful at the same time” (interview with Iraqi intellectual July 7, 2010). Similarly, a Kurdish student argued, “After 2003, I could not believe my eyes. We ‘Iraqis’ started killing each other because we have different ethnicities and identities. This is unbelievable” (interview with Kurdish student July 6, 2010). Many also criticized how
the de-Ba`thification policy considered the Ba`th party an exclusively Sunni party. As explained in Chapter 4, even though many Sunnis were represented in the party’s upper ranks and the leadership structures of military and the security services (interview with Feaz Ahmed October 11, 2012; interview with Matt Sherman November 7, 2012), it was incorrect to argue that Ba`th was a Sunni party. First, the Ba`th party had a significant number of Shi`i, Christian, and Kurdish members (interview with Alaa Al-Tamimi February 2, 2011). Second, those who held higher levels within the party structure or who were in leadership positions were identified based on their tribal connections and loyalty rather than religious affiliation (interview with Feisal Istrabadi September 14, 2011). Al-Tamimi made clear that “Saddam was against who was against his rule without questioning whether that person was Shi`i or Sunni” (interview with Alaa Al-Tamimi February 2, 2011).

Nevertheless, during the de-Ba`thification process, the people who paid the price were Sunnis. Americans did not know a lot about the Ba`th party and Iraqi culture. Only a few Americans in the field knew Arabic or anything about Middle East (interview with Lawrence Wilkerson October 29, 2012). Paul Hughes described how Americans did not grasp the culture, “Women were patted down in the security checking points in the open by US male soldiers...You have to have females doing this not men. And you cannot do this in front of everybody else, you got to separate it. But nobody understood this…We did not understand the climate we were getting into. We did not understand the social geography, and the worst part was nobody was interested in understanding” (interview with Paul Hughes November 9, 2010). This created a great opportunity for émigrés, who
were mainly Shiʿi, to promote the idea that Baʿth was a Sunni party and to manipulate the
U.S. narrative. Fred Smith admitted that the narrative was that if you were just hiring
Shiʿis or Kurds at a given public institution, it meant that institution was free from
Baʿthists (interview with Frederick C. Smith November 10, 2010). U.S. officials were
conditioned that the more Sunnis out of the government, the less Baʿthist influence on the
system. This was very practical and efficient for the U.S. officials. As a CPA official
acknowledged that creating a Shiʿi or Kurdish problem would have been worse for
democratization efforts than creating a Sunni problem (interview with CPA official
November 10, 2010). Provoking an ethnic and sectarian divide was not seen as a huge
challenge for democratization.

Furthermore, after the administration of de-Baʿthification was transferred to
Iraqis, the process was used to promulgate sectarian agendas (interview with Kanan
Makiya October 27, 2010). Thus, de-Baʿthification was implemented in such a way that a
Shiʿi could easily escape from de-Baʿthification because they were the victims and they
shared the same vision with the new regime (interview with Alaa Al-Tamimi February 2,
2011); Sunnis were alienated (interview with Mowaffak Al-Rubaie August 25, 2010).
This narrative led to Sunni discrimination as the country became more polarized
(interview with Matt Sherman November 7, 2012), and was one of the reasons why de-
Baʿthification would never promote reconciliation in Iraq (interview with Feisal
Istrabadi, September 14, 2011).

A contrary view held by some was that Shiʿis were equally affected by de-
Baʿthification (interview with Al-Talibi March 16, 2011); Sunnis used the term de-
Sunnification, in order to gain political advantage in post-Ba’thist Iraq and to protect themselves from being tagged as offenders. As Walter Slocombe explained, “Sunnis who were not particularly Ba’thists and certainly held no desire for Saddam to return…saw de-Ba’thification as a part of transfer of power from Sunni to Shia” (interview with Walter B. Slocombe, September, 23, 2010). Sunnis also wanted to justify the use of force against Shi’is because they were already egged on by Saudi Wahhabists and Al-Qaeda provocateurs (interview with Ali Daoood, March 15, 2011).

Some argued that Americans and Shi’is used de-Ba’thification to discriminate Sunnis and others believed that Sunnis used de-Ba’thification to justify the use of violence. Although it is open to debate if there was a de-Sunnification process, it is clear that one of the most dangerous consequences of de-Ba’thification was the politicization of sectarian differences and Islamization of the public sphere. Today in Iraq, kids learn Islam and the difference between Shi’i and Sunni at school, which is producing a generation of citizens who will most likely hate one another (interview with CPA translator October 17, 2010). Women who work in the government have been pressured to wear a scarf no matter what their religious beliefs (interview with NGO worker October 17, 2010). As John Agresto, CPA Senior Advisor at the Ministry of Higher Education and Scientific Research, observed, “Even Christian women, whose hair was often quite stylish, took to covering themselves, though they did so for prudential reasons—or, not to put too fine a point on it, out of fear” (Agresto 2007, 79).

The new us (The Shi’is or the Kurds) versus them (Sunnis or Ba’thist) narrative decreased the chances of reconciliation and peaceful coexistence (Ghanim 2011, 77-81),
increased the number of revenge killings and empowered an unofficial de-Ba’thification process (interview with Ali Allawi May 21, 2010; interview with Scott Carpenter October 27, 2010; interview with Paul Bremer November 29, 2010). As John Agresto wrote, “…of the three dozen or so professors killed in the time I was in Iraq, my guess is that almost all of them were killed by their students. Most were murdered for political reasons: they were suspected or known to be old-line Ba’athists” (Agresto 2007, 79). Similarly, American journalist Nir Rosen told the story of two brothers, Hussein and Ahmed, Badr Brigade soldiers who became religious and formed an assassination group in order to murder Saddamists. As Rosen described,

Hussein and Ahmed obtained Baath Party records with the names, addresses, and details of members in Seidiya—they even included the types and serial numbers of weapons owned by the men…Hussein and Ahmed scanned the records and interviewed about ten former Baath Party members a day. They would knock on their doors and inform the Baathists: “You were a Baath Party member, and you need to come visit us in our office in the Elam Market to clarify few issues.” Then they would leave…The Baathist would enter their office, sit on the bench, and sign a statement that he was innocent and not involved in any of the Baath Party crimes…Then they would be asked to hand over their weapons, and Ahmed and Hussein would compare the serial numbers with those on record. Local Baathists were frightened of this organization and started fleeing Seidiya…The murder of Baathists in Seidiya intensified one month after the office opened…Ahmed spoke proudly about his operations in public and often said that he would exceed 100 dead Saddamists by the end of 2005…(Rosen 2010, 55-56).

As an Iraqi intellectual summoned up, “de-Ba’thification ended up being not a purge from office but a purge from life” (interview with Iraqi intellectual July 7, 2010).

Moreover, de-Ba’thification, especially demilitarization, increased security problems in Iraq. Some argued that the wide-reaching de-Ba’thification process provided

31 Armed militia of the SCIRI
enough capacity for insurgency rather than preventing a revenge campaign against Ba’thists. Former Director of the CIA, George Tenet (2007, 427) claimed that de-Ba’thification “wasn’t protecting Iraqis; it was destroying what little institutional foundations were left in the country. The net effect was to persuade many ex-Ba’thists to join the insurgency.” Similarly, David Dunford recalled,

Suddenly the top 30,000 Baathist parties were out, and that was ideological. It certainly wasn’t practical. What that meant, in my view, was those 30,000 people were basically told they had no future in Iraq. They were Iraqi; they had really no other place to go. Every one of them probably was the head of a fairly large family of Iraqis, so with that policy we made very quickly a huge number of enemies, and many of those enemies we find shooting at us today. I did, sort of under the guise of a memo on the Foreign Ministry, I did a memo to Bremer not challenging his de-Baathification policy, but simply saying we now are going to have a major security problem and we’d better be ready for it (USIP interview with David Dunford August 25, 2004).

Yet, Douglas Feith and many U.S. officials believed that locals were identifying and either capturing or killing Ba’thists right after the U.S. invaded Iraq and before the official de-Ba’thification process began as a result of an already existing deep-seated hatred and atrocity. According to their perspective, the already existing insurgency can only be taken under control by a de-Ba’thification process. As Smith explained, “People who left the military were not immediately armed because arms, rifles, grenade launchers and such were just awash in that country. Every 12-year-old owned a rifle. There were just so many weapons and I do not think that dissolving the army promoted insurgency…I really think that it would have happened regardless” (interview with Frederick C. Smith November 10, 2010).

In reality, it was very naïve to believe that the so-called already existing insurgency could be contained through de-Ba’thification. Many of the purged army and
police officers were hired by insurgents because insurgents were giving these disenchanted recruits money and that was all they really needed (interview with Alaa Al-Tamimi February 2, 2011). As Feisal Istrabadi explained, “de-Ba‘thification looked like it will affect 10,000, 30,000 or 50,000 people not 750,000, but the average member of a family in Iraq is 5, so you have to multiply the estimate number by 5 to understand the fact that there will be more people than you estimate, who do not know how to provide for themselves and for their families” (interview with Feisal Istrabadi September 14, 2011). With the de-Ba‘thification process and especially with de-militarization, the U.S. went to bed with a whole lot more enemies than it had begun the day with (PBS interview with Jay Garner August 11, 2006). The result of disbanding the army was not only great loss of weaponry and of experienced military individuals but also a loss of a useful partner that could help maintain public order (Haas 2009, 261). In order to prevent mass unemployment and an increasing security threat, and to achieve successful nation-building, there needed to be a well-planned DDR process that disarm, rehabilitate, and offer decent jobs to those affected by the de-Ba‘thification process (PBS interview with James Dobbins June 27, 2006; interview with Gerald Burke November 9, 2012).

The dissolution of army and also the dissolution of other government entities and the de-Ba‘thification of ministries, the U.S. and later the IGC created a huge governance gap in Iraq. As Alex Dehgan explained,

most important scientists who were sitting at home without a salary, who were being approached by Iranians and by insurgents....We discussed the issue of Baath Party membership with Washington. I argued that de- Baathification should not be applicable to our program, which people (in Washington) seemed to clearly agree with. We floated a memo through the CPA, which argued the same point. Then I went to the Iraqi Government. I was meeting with the Minister of Science
and Technology on a weekly basis. And the Ministry Administrator himself took me to the de-Baathification Committee. We explained that we needed to work with people whose knowledge is very, very important, (regardless of their previous political affiliations.) For me, finding stockpiles of weapons was not the critical issue. The critical issue was co-opting people with knowledge. Take the expression, ‘If you give a man a fish, he eats for a day, if you teach a man to fish, he eats for a lifetime’. Well, these are the people who teach people how to fish, these are people whose knowledge is in high demand and can be very valuable, but, at the same time, people who were not getting salaries (USIP interview with Alex Dehgan August 13, 2004).

Throwing teachers, professors, doctors, engineers, scientists and those who had background, experience, and knowledge of how to run day-to-day functions of Iraq out of the street and jobless paralyzed the Iraqi government machine and wasted a huge chunk of human resources (interview with Iraqi professor July 8, 2010; interview with Omar Fekeiki October 27, 2010; interview with David Nummy November 18, 2010; interview with Laith Kubba October 10, 2012). Also, as Jay Bachar, an Army Reserve civil affairs officer in Baghdad, maintained that finding new people to fill in those public posts was extremely difficult,

…but [CPA] went too far…We immediately felt that in civil affairs because we were involved and again this is a little bit out of my lane, but the folks I know that were involved in governance, we were just having a hard time finding, once you got rid of the first four tiers of people, when you get four levels deep, even in Washington, D.C. when you’re getting four levels deep you’re getting down to the experts in there, you’re not getting into the political appointees, you’re getting people that know their jobs, that have been there working, and you strip all that away and there’s going to be a loss of efficiency and there’s going to be a loss of institutional knowledge. They cut too deep and our governance people are having a heck of a time training people up or getting the ministries to function properly (USIP interview with Jay Bachar July 19, 2004).

Most of the time, new recruits were not hired based on merit but based on their backgrounds, connections, and religious affiliations (interview with Omar Fekeiki October 27, 2010; interview with Rend Al-Rahim Francke September 7, 2011). To the
same extent, many used de-Ba’thification just to be able hire their relatives. As Walter Slocombe argued,

…Iraq is not Sweden…a lot of people did not give a damn whether principal was a good guy or bad guy, but ‘because he is not my cousin he needs to go.’ People would say, ‘I now (I and friends of mine) have power and I will make some changes because I can.’…And I am sure there are a lot of people who were fired from jobs who may or may not have been particularly political, but were fired either because just people wanted a change, or because of more or less understandable but essentially undesirable reasons to the effect that now it is my turn to fill the job (interview with Walter B. Slocombe September, 23, 2010).

Many unfortunate design and implementation decisions in Iraq, left the country in a turmoil. As Colin Powell analogized the U.S. response with “pottery barn rule”: “We broke it, we owned it, but we did not take charge” (Powell 2012, 215). At the end, in the hands of occupier and later of political figures only motivated with revenge and political ambitions, de-Ba’thification caused and is still fostering several unmanageable problems that so far, have prevented Iraq’s opportunity to become a stable democratic country.

5.5 Conclusion

This chapter provided a detailed description and analysis of how the vetting process should be planned and implemented and how the designers and implementers of de-Ba’thification failed in almost every step. The positions and persons subject to de-Ba’thification were identified arbitrarily. The U.S. administration did not have enough knowledge about the country and the party so their narrative was mainly shaped by Iraqi émigrés who were as ignorant of the situation. Moreover, the lack of guidance on how to implement the process led to several inconsistencies. Both commissions, the HNDBC and the AJC, that were responsible for implementing de-Ba’thification were not entirely
independent and the selection of members of these commissions were not based on merit. Furthermore, the executive and enforcement powers of these commissions were never clear, which made politicization and corruption very easy in the early stages of implementation. Similarly, the sanctions enforced and the due process guarantees were not clearly understood and therefore, not implemented in a timely and consistent fashion. The implementation of de-Ba‘thification also impeded the work of the IHT and slowed the transitional justice process.

This mismanaged, untimely and on-going process failed to fulfill its premises and provided means for the several problems that Iraq is still facing today such as sectarianism, insurgency, revenge killings, unemployment, and governance gap. Kanan Makiya concluded that “Thinking of what it [de-Ba‘thification] should be and the American implementation of what they thought it should be and then the actual practice were three completely different things. I deplored away that it practiced in Iraq. And regret now not having been more thoughtful or predicted the kinds of abuses...” (interview with Kanan Makiya October 27, 2010).
CHAPTER 6

Conclusion

6.1 Main Arguments and Findings

The main goal of this dissertation was to conduct an empirical study of the rationales, design and implementation of the de-Ba’thification process in Iraq. At the beginning of this dissertation, I posed several questions: What were the rationales behind adopting a purging process in Iraq? How did the designers and implementers of this process justify these rationales? How were these rationales incorporated into the design and implementation of the de-Ba’thification process? Who participated in the design and implementation of de-Ba’thification? How did they design and implement the process? This dissertation tried to answer these questions by analyzing a wide range of interviews and documents in chapters 4 and 5.

In chapter 4, I described and analyzed the rationales and expectations held by various stakeholders, mainly U.S. officials, Iraqi elites and ordinary Iraqis of any de-Ba’thification process. There were twelve main rationales presented: transforming institutions in order to safeguard the democratic transition, satisfying expectations of the Iraqi public, gaining Iraqi support and trust in U.S. leadership, balancing the interests of Kurds and Shi’is against Sunnis, securing the new regime, preventing a Ba’thist revival, normalization and reconciliation, promoting the “de-ideologization” of Iraqi society and removing Ba’thist ideology from the social, political and education systems, cleansing the system from corrupt and criminal activities that were tolerated under the Ba’th...
regime, preventing a revenge campaign against Ba’thists, establishing meritocracy, and comforting the victims of the Ba’th party. However, those who designed and implemented the process, mainly the U.S. officials and Iraqi expatriates, used de-Ba’thification to pursue personal and institutional interests. Some of the participants of this study mentioned that too much reliance on émigrés without conducting the necessary groundwork ahead of time created inefficiencies and prevented many efforts toward democratization. Also, some of the ordinary Iraqis mentioned that they were not satisfied with the de-Ba’thification program because they were in need of basic human needs and the program was associated with several untrustworthy political figures.

As explained in Chapter 5, most of the rationales and concerns were not considered when designing and implementing the de-Ba’thification program. For instance, the positions and persons who were subjected to de-Ba’thification were identified arbitrarily, there was not enough guidance on how to implement the de-Ba’thification especially at the provincial and ministerial levels, there was a great deal of ignorance about the composition of the Ba’th party and Iraqi culture. The commissions that were responsible for implementing the program were highly politicized, and consequently implementation process was inconsistent and corrupt. All of these problems left Iraq in the midst of broader quandaries including sectarianism, extra-judicial killings and governance gap.
6.2 Lessons Learned

6.2.1 Policy-Makers

From the findings of this dissertation, we can infer that the outcome of any transitional justice effort that seeks to cleanse government from the remnants of the past regime depends in part on what the designers, implementers and its affected population expect from it and how these expectations are reflected in its design and implementation. Although the expectations in each context could be different and unique, understanding the general principles of vetting as explained in the Vetting Guidelines, and learning from the previous programs, is essential.

In this section, I address what the policy-makers can learn from the mistakes of de-Ba’thification. First, the occupying forces did not assume the full responsibility of de-Ba’thification when the implementation was transferred to the Iraqis which damaged their trust for U.S. leadership in Iraq. The occupying forces should follow the Geneva Conventions guidelines which leaves the responsibility of restoring law and order to the occupier (interview with Paul Hughes November 9, 2010) and establish a system with well-structured checks and balances in order to ensure that the disqualification program operates fairly even after the implementation is transferred to locals (interview with Scott Carpenter October 27, 2010).

Second, the de-Ba’thification commissions that were established to implement the de-Ba’thification program were highly politicized. Therefore, political ambitions and revenge took precedence over democratic transition. The committee that is responsible for the implementation of the disqualification program should be a legitimate body,
preferably a judicial or technocratic committee rather than a political one. In order to establish a fair and transparent process, another independent committee should supervise the work of the committee that is responsible for implementing the program. Paul Bremer assumed responsibility and stated several times that he should have turned the process over to a judicial body. In our interview, he raised the issue again,

The mistake I made, and I made it basically at the outset when I announced that we were going to establish an Iraqi de-Ba`thification process,…was saying the right process was to turn it over to the Iraqi politicians…I said [to IGC that] “you are the Iraqi politicians now. You should set up a system”…I should have instead established some kind of a judicial process made up of Iraqi lawyers…and it would have taken the de-Ba`thification out of the Iraqi political hands. (interview with Paul Bremer November 29, 2010)

Also, the dismissals should end before it is used as a political gambit in order to proceed with additional reforms, rebuild institutions, reintegrate individuals to the society, and to establish trust between the government and its citizens.

Third, once the individual responsibility is not considered as the criteria for dismissals and exemptions are granted arbitrarily those who are involved in human rights abuses can escape from accountability while those who are not involved in human rights abuses are held accountable. The majority of the ordinary Iraqis I interviewed emphasized the fact that national reconciliation and democracy depends on a transitional justice mechanism that respects individual responsibility.

Fourth, the details of the de-Ba`thification was not clearly defined and publicly disseminated. As an example, according to Laith Kubba, U.S. officials failed to send a constructive message, which cost them their credibility in the eyes of Iraqi public (interview with Laith Kubba October 10, 2012). Also Scott Carpenter criticized the
American approach of not disseminating the details of the de-Ba’thification program as follows, “I would have made it much more clear who was being de-Ba’thified and what the mechanism for appeal would be and we did not do that and it was pathetic, we were just pathetic in our ability to communicate. We had no real ability to broadcast throughout the country to make sure that everybody heard it” (interview with Scott Carpenter October 27, 2010). Therefore, the details and implementation of the disqualification program should be broadcasted once the occupying power has the full control of the country.

Finally, the occupying forces should have reliable and accurate knowledge about the country, its culture, and political circumstances before initiating such a program. There should be comprehensive ground work and consultation with the public in order to be sure whether vetting is the right transitional justice mechanism to utilize and if there is a need for additional reforms or transitional justice mechanisms. As explained in Chapter 5, the U.S. officials did not have enough knowledge about Iraq or the Ba’th party and even those who were in the field did not have the necessary language skills to communicate with Iraqis. Instead, they followed Edward Said’s famous premise that the knowledge of the Occident about the Orient is generated from preconceived archetypes (interview with Mr. Diplomat October 12, 2012).

6.2.2 Arab Spring Governments

Although the Middle East and North African countries that have overthrown their governments during the Arab Spring refrained from establishing a de-Ba’thification-like program, the experiences of Iraq could be valuable for future efforts at eliminating the
influence of previous regimes in these countries. The transitions in the Arab Spring countries were more democratic than in Iraq. Their own citizens rather than an occupying power have overthrown the oppressive regimes in Tunisia, Egypt, Libya and Yemen.

In most of these Arab Spring countries there were some lenient efforts to cleanse the government from the remnants of the previous regimes, except Yemen. Yemen was ruled by Ali Abdullah Saleh and his party, the General Peoples Congress. There was no attempt to disband his party after the revolution mainly because Yemeni officers who supported Saleh were relatively independent and made their own decisions especially when it came to the decision of continuing to support Saleh (Terill 2012, 84). Hence, Saleh’s regime was not nearly as repressive as Saddam Hussein’s.

In Tunisia, however, the former president Zine El Abidine Ben Ali’s party, the Constitutional Democratic Rally (RCD), was dissolved in March 2011 and the security apparatus was dismantled. But, it is still not clear if there is any vetting mechanism established to implement and follow up with the conditions of the banned party and security officials. In Egypt, former president Hosni Mubarak’s National Democratic Party (NDP) was dissolved in April 2011. Nevertheless, the former members of the NDP continued their political activities until this year. Article 232 of the Constitution that was approved in December 2012 stipulated that “the NDP leaders shall be banned from political work and prohibited from running in presidential or legislative elections for 10 years from the date the Constitution was adopted” (Halawa 2013). In addition, there is a new judicial authority bill that aims to purge Mubarak-era judges from their posts or as critiques call it, the “Brotherhoodization” of the judiciary (El Sharnoubi 2013). These
new developments in Egypt demonstrate that a possible de-Ba’thification-like process could be easily politicized.

In Libya, unlike Tunisia and Egypt, there were no political parties under Muammar Al-Gaddafi. Instead, there were the Revolutionary Committees that were set up by the regime to create vehicles for pro-regime activism; similar to Ba’th party these committees were responsible for defending the revolution and were used as a tool of political and ideological surveillance (Terill 2012, 72). Also as in Saddam Hussein’s regime, the most powerful individuals in Libya were the close associates and the family members of Al-Gaddafi (Terill 2012, 72). Despite these similarities between Saddam Hussein’s Iraq and Muammar Al-Gaddafi’s Libya, Al-Gaddafi’s regime was not nearly as repressive as Saddam Hussein’s. According to Andrew Terill’s analysis, those who worked in the Revolutionary Committees were responsible for human rights abuses and tortures and dismissing them from the government would not lead to a massive loss of administrative talent as in Iraq (Terill 2012, 72). Yet, new developments indicate that Libya is close to making the same mistakes of de-Ba’thification. The Integrity and Patriotism Commission that was formed in April 2012 in order to vet senior government and security officials, members of congress, and the heads of trade unions, universities and other public institutions barred several elected members of the General National Congress (GNC) and many other public officials from their posts (Human Rights Watch 2013). According to Human Rights Watch, the commission has vague and overly broad criteria for dismissals. Moreover, the new Political Isolation Law that aims to isolate those who were at the decision-making level in the Gaddafi regime was passed by the
General National Congress in May 2013. Even though it is too early to make any assumptions about how this law will be implemented, it seems likely that law will be used as a political tool and prevent Libya’s chances at its path to democracy.

None of the abovementioned countries is factionalized along sectarian lines like Iraq. Therefore, the chances of one sectarian group being targeted by a possible purging process are extremely low. However, the recent developments in these countries show that implementation of a possible purging process would likely be motivated by revenge and political ambition. In order to maintain hardly-earned freedom and to win the struggle for democracy, the Arab Spring governments should implement dismissals fairly and transparently.

As a final point, it is worth mentioning what Syria should learn from the de-Ba’thification of Iraq, despite its still ongoing civil war. Syria and Iraq share several similarities. The most evident similarity is that the existence of Ba’th influence. Syria is also ruled by a Ba’thist dictatorship; the party has the same repressive powers. Yet, as in Iraq, the real power is in the hands of President Bashar Al-Assad and his inner circle. Since 1970, Syria has been controlled by the Assad family that belongs to the Alawite sect of Shi‘i Islam that is only 10% of the total population. Most of the important members of the government, military and the party are from the Alawite sect or other communities close to Alawites (Terrill 2012, 78-79). Hence, similar to Iraq, the Syrian government is controlled by members of a sectarian minority. Also, those who are in the lower ranks of the party hierarchy, like those in Iraq, joined the party in order to obtain their jobs, provide for their families and benefit from the privileges.
Despite these similarities between Iraq and Syria, the conditions that may cause a regime change in Syria seem different. Unlike Iraq, Syria is not occupied by an outside power. Some of the army officials have defected and a significant number of low-ranking Ba`th officials have resigned during the uprisings. These developments validate that there are some disagreements within the highly politicized institutions of Assad regime (Terill 2012, 81). Considering these developments, during a possible de-Ba’thification process separating criminals from non-criminals might be easier when compared to the Iraqi case. Under these circumstances, dismantling the Syrian army might lead to similar problems like those faced in Iraq. Also, if the regime is overthrown by the opposition after four decades of authoritarianism and over two years of civil war, the demands for retribution will be excessive. Hence, a possible de-Ba’thification process administered by the Sunni majority and with the support of neighboring countries with Sunni leadership may eventually lead to a de-Alawification process.

At the time of this writing, the Syrian civil war still continues and many of the Syrian opposition figures state that a de-Ba’thification process seems unlikely and that they want a smooth transitional period. For instance, Mohammad Al-Abdallah, executive director at the Syria Justice and Accountability Center, criticized the U.S. government’s approach in Iraq as follows, "The dissolution of the army was a terrible idea; the de-Baathification was a major wrong step that Syrians should avoid" (cited in Cengiz 2012). After a regime replacement, if the president and his inner circle won’t be put on a trial or a well-established judicial mechanism won’t be structured, de-Ba’thification still seems to be a possible option for Syrians.
6.3 Research Contribution and Future Direction

There are several important implications for the literature in this dissertation. De-Ba‘thification has been one of the most speculative yet understudied events of the Iraq war. There had been several discussions regarding the origins, rationales, design, implementation and outcome of de-Ba‘thification. This dissertation attempted to challenge speculation with empirical evidence and introduced this case to the transitional justice literature. First, by presenting twelve rationales and expectations of various stakeholders those involved in or affected de-Ba‘thification, this study demonstrated that there could be several conflicting rationales and expectations for the same transitional justice mechanism.

Second, this dissertation presented the details of design and implementation of de-Ba‘thification and analyzed it by using existing frameworks. The process of de-Ba‘thification and its implementation was not open and transparent therefore, uncovering the details of the HNDBC and AJC was a significant contribution of this dissertation. With this attempt, my study expanded the scholarly literature on purging not only by describing and analyzing the latest purging effort but also by deriving important policy implications that can be used to improve the implementation of similar processes. Since there are not enough studies on the implementation of purges, especially under the auspices of occupiers or outside parties, this study was an attempt to draw important lessons on the role of occupier in establishing and administrating transitional justice mechanisms.
Third, differentiating between lustration, vetting, and purging, this study cleared up the terminological confusion had existed in the literature. Additionally, using the term purging to describe the de-Ba’thification process, I attempted to emphasize the problems associated with purging.

While this dissertation has made a contribution to the literature, a great deal of work remains in order to gain a more complete understanding of the de-Ba’thification process. I contend that further analysis of the implementation of de-Ba’thification in ministerial as well as provincial levels is necessary to note inconsistencies in the implementation phase and to further our understanding of the de-Ba’thification program. The literature would benefit from ministerial-level comparisons of implementation of de-Ba’thification and how the implementation differences led to different outcomes. Also, an extensive study about public opinion on de-Ba’thification can be beneficial in order to make more accurate assessments about the reconciliatory potential of a de-Ba’thification program. The new developments such as the removal of the head of the AJC and the assassination and abduction of Sunni candidates before the provincial elections in April 2013 and new amendments to the de-Ba’thification law still waiting to be approved by the parliament should also be investigated in order to expand our knowledge on the politicized character of de-Ba’thification and to assess its additional consequences.
APPENDIX A

Coalition Provisional Authority Order Number 1

De-Ba`thification of Iraqi Society

Pursuant to my authority as Administrator of the Coalition Provisional Authority (CPA), relevant U.N. Security Council resolutions, and the laws and usages of war,

Recognizing that the Iraqi people have suffered large scale human rights abuses and deprivations over many years at the hands of the Ba`ath Party,

Noting the grave concern of Iraqi society regarding the threat posed by the continuation of Ba`ath Party networks and personnel in the administration of Iraq, and the intimidation of the people of Iraq by Ba`ath Party officials,

Concerned by the continuing threat to the security of the Coalition Forces posed by the Iraqi Ba`ath Party,

I hereby promulgate the following:

Section 1

Disestablishment of the Ba`ath Party

1) On April 16, 2003 the Coalition Provisional Authority disestablished the Ba`ath Party of Iraq. This order implements the declaration by eliminating the party’s structures and removing its leadership from positions of authority and responsibility in Iraqi society. By this means, the Coalition Provisional Authority will ensure that representative government in Iraq is not threatened by Ba`athist elements returning to power and that those in positions of authority in the future are acceptable to the people of Iraq.

2) Full members of the Ba`ath Party holding the ranks of ‘Udw Qniiyya (Regional Command Member), ‘Udw Far (Branch Member), ‘Udw Shub’al (Section Member), and ‘Udw Firqah (Group Member) (together, “Senior Party Members”) are hereby removed from their positions and banned from future employment in the public sector. These Senior Party Members shall be evaluated for criminal conduct or threat to the security of the Coalition. Those suspected of criminal conduct shall be investigated and, if deemed a threat to security or a flight risk, detained or placed under house arrest.

3) Individuals holding positions in the top three layers of management in every national government ministry, affiliated corporations and other government institutions (e.g., universities and hospitals) shall be interviewed for possible affiliation with the Ba`ath Party, and subject to investigation for criminal conduct and risk to security. Any such persons detained to be full members of the Ba`ath Party shall be removed from their employment. This includes those

CPA/ORD/16 May 2003/01

1
and risk to security. Any such persons determined to be full members of the Baath Party shall be removed from their employment. This includes those holding the more junior ranks of 'Udāw (Member) and 'Udāw 'Amīl (Active Member), as well as those determined to be Senior Party Members.

4) Displays in government buildings or public spaces of the image or likeness of Saddam Hussein or other readily identifiable members of the former regime or of symbols of the Baath Party or the former regime are hereby prohibited.

5) Rewards shall be made available for information leading to the capture of senior members of the Baath party and individuals complicit in the crimes of the former regime.

6) The Administrator of the Coalition Provisional Authority or his designates may grant exceptions to the above guidance on a case-by-case basis.

Section 2
Entry into Force

This Order shall enter into force on the date of signature.

L. Paul Bremer, Administrator
Coalition Provisional Authority

CPA/ORD/16 May 2003/01
APPENDIX B

Coalition Provisional Authority Order Number 2

Dissolution of Entities

Pursuant to my authority as Administrator of the Coalition Provisional Authority (CPA), relevant U.N. Security Council resolutions, including Resolution 1483 (2003), and the laws and usages of war,

Reconfirming all of the provisions of General Franks’ Freedom Message to the Iraqi People of April 16, 2003,

Recognizing that the prior Iraqi regime used certain government entities to oppress the Iraqi people and as instruments of torture, repression and corruption,

Reaffirming the Instructions to the Citizens of Iraq regarding Ministry of Youth and Sport of May 8, 2003,

I hereby promulgate the following:

Section 1
Dissolved Entities

The entities (the “Dissolved Entities”) listed in the attached Annex are hereby dissolved. Additional entities may be added to this list in the future.

Section 2
Assets and Financial Obligations

1) All assets, including records and data, in whatever from maintained and wherever located, of the Dissolved Entities shall be held by the Administrator of the CPA (“the Administrator”) on behalf of and for the benefit of the Iraqi people and shall be used to assist the Iraqi people and to support the recovery of Iraq.

2) All financial obligations of the Dissolved Entities are suspended. The Administrator of the CPA will establish procedures whereby persons claiming to be the beneficiaries of such obligations may apply for payment.

3) Persons in possession of assets of the Dissolved Entities shall preserve those assets, promptly inform local Coalition authorities, and immediately turn them over, as directed by those authorities. Continued possession, transfer, sale, use, conversion, or concealment of such assets following the date of this Order is prohibited and may be punished.

CPA/ORD/23 May 2003/02
Section 5
Employees and Service Members

1) Any military or other rank, title, or status granted to a former employee or functionary of a Dissolved Entity by the former Regime is hereby cancelled.

2) All conscripts are released from their service obligations. Conscription is suspended indefinitely, subject to decisions by future Iraq governments concerning whether a free Iraq should have conscription.

3) Any person employed by a Dissolved Entity in any form or capacity, is dismissed effective as of April 16, 2003. Any person employed by a Dissolved Entity, in any from or capacity remains accountable for acts committed during such employment.

4) A termination payment in an amount to be determined by the Administrator will be paid to employees so dismissed, except those who are Senior Party Members as defined in the Administrator’s May 16, 2003 Order of the Coalition Provisional Authority De-Ba’athification of Iraqi Society, CPA/ORD/2003/01 (“Senior Party Members”) (See Section 5.6).

5) Pensions being paid by, or on account of service to, a Dissolved Entity before April 16, 2003 will continue to be paid, including to war widows and disabled veterans, provided that no pension payments will be made to any person who is a Senior Party Member (see Section 5.6) and that the power is reserved to the Administrator and to future Iraqi governments to revoke or reduce pensions as a penalty for past or future illegal conduct or to modify pension arrangements to eliminate improper privileges granted by the Ba’athist regime or for similar reasons.

6) Notwithstanding any provision of this Order, or any other Order, law, or regulation, and consistent with the Administrator’s May 16, 2003 Order of the Coalition Provisional Authority De-Ba’athification of Iraqi Society, CPA/ORD/2003/01, no payment, including a termination or pension payment, will be made to any person who is or was a Senior Party Member. Any person holding the rank under the former regime of Colonel or above, or its equivalent, will be deemed a Senior Party Member; provided that such persons may seek, under procedures to be prescribed, to establish to the satisfaction of the Administrator, that they were not a Senior Party Member.

CPA/ORD/25 May 2003/02
Section 4
Information

The Administrator shall prescribe procedures for offering rewards to persons who provide information leading to the recovery of assets of dissolved entities.

Section 5
New Iraqi Corps

The CPA plans to create in the near future a New Iraqi Corps, as the first step in forming a national self-defense capability for a free Iraq. Under civilian control, that Corps will be professional, non-political, militarily effective, and representative of all Iraqis. The CPA will promulgate procedures for participation in the New Iraqi Corps.

Section 6
Other Matters

1) The Administrator may delegate his powers and responsibilities with respect to this Order as he determines appropriate. References to the Administrator herein include such delegates.

2) The Administrator may grant exceptions or limitations in this Order at his discretion.

Section 7
Entry into Force

This Order shall enter into force on the date of signature.

L. Paul Bremer, Administrator
Coalition Provisional Authority

CPA/ORD/23 May 2003/02
ANNEX

COALITION PROVISIONAL AUTHORITY ORDER NUMBER 1

DISSOLUTION OF ENTITIES

Institutions dissolved by the Order referenced (the "Dissolved Entities") are:

- The Ministry of Defence
- The Ministry of Information
- The Ministry of State for Military Affairs
- The Iraqi Intelligence Service
- The National Security Bureau
- The Directorate of National Security (Amn al-`Am)
- The Special Security Organization

All entities affiliated with or comprising Saddam Hussein's bodyguards to include:

- Murafaqin (Companions)
- Humsya al Khan (Special Guard)

The following military organizations:

- The Army, Air Force, Navy, the Air Defence Force, and other regular military services
- The Republican Guard
- The Special Republican Guard
- The Directorate of Military Intelligence
- The Al Quds Force
- Emergency Forces (Qawat al Tawari)

The following paramilitaries:

- Saddam Fedayeen
- Ba`ath Party Militia
- Friends of Saddam
- Saddam's Lion Cubs (Asbab Saddam)

Other Organizations:

- The Presidential Diwan
- The Presidential Secretariat
- The Revolutionary Command Council

CPA/ORD/23 May 2003/02
- The National Assembly
- The Youth Organization (al-Futuwh)
- National Olympic Committee
- Revolutionary, Special and National Security Courts

All organizations subordinate to the Dissolved Entities are also dissolved.

Additional organizations may be added to this list in the future.
APPENDIX C

Interview Protocols

U.S. officials

I would like to start by learning your responsibilities and your daily tasks as the senior advisor/administrator at the ORHA/CPA...

The State Department led the Future of Iraq study over a year before the invasion of Iraq, to give an opportunity to discuss the future prospects for Iraq. De-Ba’thification was one of the many transitional justice ideas that the Iraqis discuss in these meetings but why was the state department unwilling to lead the transiting efforts after the actual invasion?

You were in the field right before the de-Ba’thification and demilitarization and right after these orders were issued. As far as you know, where did the de-Ba’thification idea come from? How was the idea of de-Ba’thification developed?

Why was de-Ba’thification undertaken? What were the rationales for having such a process according to you?

How did you learn about the CPA’s first two orders?

What was your role in devising or overseeing de-Ba’thification?

How did the CPA consult with the Iraqis about the desirability of de-Ba’thification?

Many argued that de-Ba’thification was based on the party rank, guilt by association or collective guilt but it did not consider the individual guilt. How do you respond to that?

How were the de-Ba’thification orders implemented? / How did you implement the de-Ba’thification order, for instance did you specifically look for people who were in the top four echelons of the party and top three level positions in public institutions? How did you determine who were Ba’thi who were not?

What was the scope of the de-Ba’thification? How many people were planned to be vetted in the beginning?

Some argue that de-Ba’thification affected 30,000 servants but others claim that it reached the scope of approximately 150,000 servants. How would you explain this inconsistency?

Do you think that de-Ba’thification spread to those who were not officially planned to be
vetted? To those who were not in highest-level management positions that were holding junior ranks such as member, active members? What happened to the vetted or purged university presidents or others?

How did the exemption process work?

How did the appeals process work?

How was it determined who is eligible for pensions, retirements, severance payments? Any high-ranking officials of Ba‘th party or individuals holding positions in the top three layers of management in every state organization got any pensions? Severance? Retirement benefits?

What happened to the vetted or purged individuals?

How did the CPA oversee the implementation of de-Ba‘thification in the ministries and public institutions?

How did the CPA oversee the work of HNDBC?

What do you think about the transfer of implementation of de-Ba‘thification to the Iraqis with CPA Memorandum #7?

What changed after the Iraqis started controlling the de-Ba‘thification process?

The Iraqi government has approved a bill in 2008 that will attempt to reverse a de-Ba‘thification law, established in 2003. How would you assess this change?

How do you suggest that de-Ba‘thification could be implemented more effectively and fairly?

How would you assess the successes and/or failures of de-Ba‘thification? What would have done differently?

Could you please provide the names of at least two officials that I might contact to improve my study?

**Iraqi elites**

Can you please tell me your life under Ba‘th regime? How did you move to U.K./U.S….?

Where did the de-Ba‘thification idea come from? How was the idea of de- Ba‘thification developed?

Why did you envision such a process for Iraq? Why was de-Ba‘thification undertaken? What were the rationales for undertaking such a process?
Why do you think CPA initiated the de-Ba’thification project?

How does the CPA Order #1 differ from the de-Ba’thification idea that was developed in the FoIS working groups?

What was your role in devising or overseeing de-Ba’thification?

What do you know about the popularity of de-Ba’thification idea among Iraqis?

How was the HNDC organized and established? How many people worked at the HNDBC? What kind of tasks that each people had?

Some argue that de-Ba’thification affected 30,000 servants, but others claim that it reached the scope of approximately 150,000 servants. How would you explain this inconsistency? Do you think that de-Ba’thification spread to those who were not officially planned to be vetted?

How were the de-Ba’thification orders implemented?

How was it determined who is eligible for pensions, retirements, severance payments? Any high-ranking officials of Ba’th party or individuals holding positions in the top three layers of management in every state organization got any pensions? Severance? Retirement benefits?

How did the exemption process work?

How did the appeals process work?

What happened to the vetted or purged individuals?

How would you assess the successes and/or failures of de-Ba’thification?

The Iraqi government has approved a bill in 2008 that will attempt to reverse a de-Ba’thification law, established in 2003. How would you assess this change?

Could you please provide the names of at least two officials that I might contact to improve my study?

Other Iraqis

Can you please tell me about life under Saddam Hussein’s Ba’thist regime? What was your job?

What kind of human rights violations occurred in Iraq during the former regime? Have you personally been affected by these violations?
Were you ever forced or decided to register for the party? Why?

How important was it to be a member of the Ba’th party for lower level members?

How did the party membership allow one to receive privileges?

What is the difference between lower-level and higher-level Ba’th party members? Do you believe there is a difference in being a Ba’th party member and a “Ba’thi” or “Saddami”? If yes, can you explain the difference?

How did one receive a higher party membership status? What do you need to do to get higher-level status in the party hierarchy?

Should people who have committed human rights violations be permitted to hold public office or positions of political responsibility?

What do you know about de-Ba’thification order? How did you hear about it?

What do you think about de-Ba’thification order and the process follows that order?

How do you feel about the de-Ba’thification process being performed by the military forces occupying Iraq?

What changed after the process was handed to Iraqis?
## APPENDIX D

### Interviewee List

<table>
<thead>
<tr>
<th>Name</th>
<th>Occupation</th>
<th>Date</th>
<th>Type</th>
<th>Recorded</th>
<th>Anonymity Granted</th>
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<tbody>
<tr>
<td>Iraqi Lawyer</td>
<td>Supreme Iraqi Criminal Tribunal &amp; participant of the FoIS</td>
<td>06/4/2010</td>
<td>telephone</td>
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<td>HNDBC Advisor</td>
<td>Advisor for the HNDBC</td>
<td>06/9/2010</td>
<td>1st interview: telephone</td>
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<td>10/12/2012</td>
<td>2nd interview: face-to-face/DC</td>
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<td>Raid Juhi al-Saedi</td>
<td>Former Chief Investigative Judge, IHT</td>
<td>6/11/2010</td>
<td>telephone</td>
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<tr>
<td>Iraqi Diplomat</td>
<td>Diplomat</td>
<td>7/6/2010</td>
<td>face-to-face/UAE</td>
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<td>Iraqi Intellectual</td>
<td>NGO Worker</td>
<td>7/7/2010</td>
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<td>Mohammed Al-Hatem</td>
<td>Iraqi Student</td>
<td>7/7/2010</td>
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<td>University Professor</td>
<td>7/8/2010</td>
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<td>Iraqi scientist</td>
<td>Computer Scientist</td>
<td>7/9/2010</td>
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<td>Kanan Makiya</td>
<td>Professor at Brandeis University and intellectual behind the de-B'athification</td>
<td>8/20/2010</td>
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<td>Lewis Paul &quot;Jerry&quot; Bremer III</td>
<td>Administrator of the CPA</td>
<td>10/6/2010</td>
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<td>10/17/2010</td>
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<td>J. Scott Carpenter</td>
<td>Director of the governance group for the CPA</td>
<td>10/27/2010</td>
<td>telephone</td>
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<td>Omar Fekeiki</td>
<td>Former Washington Post correspondent/editor and cultural advisor of Iraqi news web-site</td>
<td>10/27/2010</td>
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<td>Paul Hughes</td>
<td>senior staff officer for the ORHA and later CPA</td>
<td>11/9/2010</td>
<td>face-to-face/DC</td>
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<td>Frederick C. Smith</td>
<td>Deputy Senior Advisor for National Security Affairs at the CPA and Senior Advisor to the new Iraqi Ministry of Defense</td>
<td>11/10/2010</td>
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<td>CPA Advisor</td>
<td>Advisor on Iraq’s postwar political transition at the CPA in Baghdad, Iraq from 2003 to 2004.</td>
<td>11/10/2010</td>
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<td>David Nummy</td>
<td>Former Assistant Secretary of the Treasury for Finance and Management at the ORHA</td>
<td>11/18/2010</td>
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<td>Mishkat Al-Moumin</td>
<td>Former Minister of the Environment in the Interim Iraqi Government 2004-2005</td>
<td>11/19/2010</td>
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<td>Mithal Al-Alusi</td>
<td>General Director of Culture and Media at the HNDBC</td>
<td>12/16/2010</td>
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<td>Alaa Al-Tamimi</td>
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<td>2/2/2011</td>
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<td>Ali Daoood</td>
<td>Doctor</td>
<td>3/15/2011</td>
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<td>Al-Talibi</td>
<td>Engineer</td>
<td>3/16/2011</td>
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<td>Abu-Munir</td>
<td>N/A</td>
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<td>Young Iraqi Diplomat</td>
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<td>Al-Khaiat</td>
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<td>Iraqi Translator</td>
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<td>Feisal Amin Rasoul Istrabadi</td>
<td>Principal legal drafter of Iraq's interim constitution, the Law of Administration of the State of Iraq for the Transitional Period, and participant of the FoIS</td>
<td>4/1/2011, 9/14/2011</td>
<td>telephone, telephone</td>
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<td>Rend al-Rahim Francke</td>
<td>Iraqi political activist and the participant of the FoIS</td>
<td>9/7/2011</td>
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<td>Laith Kubba</td>
<td>Former Senior Advisor to Iraqi Prime Minister Ibrahim al-Jaafari and the participant of the FoIS</td>
<td>10/10/2012</td>
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<td>Feaz Ahmed</td>
<td>CPA Translator</td>
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<td>Mr. Diplomat</td>
<td>Former Analyst at the Pentagon who worked closely with Iraqi opposition during ORHA and CPA</td>
<td>10/12/2012</td>
<td>face-to-face/DC</td>
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<td>Lawrence B. Wilkerson</td>
<td>Former Chief of Staff to United States Secretary of State Colin Powell</td>
<td>10/29/2012</td>
<td>telephone</td>
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<td>Drew Erdmann</td>
<td>Former State Department Employee and Former CPA Senior Advisor to the Ministry of Higher Education &amp; Scientific Research</td>
<td>11/2/2012</td>
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<td>Matt Sherman</td>
<td>Senior Advisor to DoS and Personal Advisor to four Iraqi Ministers of Interior and advised senior Iraqi and Coalition personnel on non-military security matters</td>
<td>11/7/2012</td>
<td>telephone</td>
<td>yes</td>
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<td>Gerald Burke</td>
<td>Former CPA Advisor to Iraq's Ministry of the Interior, which supervises Iraq's national police</td>
<td>11/9/2012</td>
<td>telephone</td>
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<td>Zena Jassim</td>
<td>Iraqi student and CPA Translator</td>
<td>12/22/2012</td>
<td>telephone/e-mail</td>
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APPENDIX E

Abbreviations/List of Frequency Used

AJC Accountability and Justice Commission
ARCs Accreditation Review Committees
CEE Central and Eastern Europe
CPA Coalition Provisional Authority
DDR Disarmament, Demobilization, and Reintegration programs
DoD U.S. Department of Defense
DoS U.S. Department of State
DPPWG Democratic Principles and Procedures Working Group
FoIS Future of Iraq Study
GNC General National Congress
HNDBC Higher National De-Ba`thification Commission
HRC Human Rights Center at the University of California, Berkeley
HRW Human Rights Watch
ICTJ The International Center for Transitional Justice
IDC Iraqi De-Ba`thification Council
IGC The Iraqi Governing Council
IHT Iraqi High Tribunal
IMIK Islamic Movement of Iraqi Kurdistan
INA Iraqi National Accord
INC Iraqi National Congress
IST Iraqi Special Tribunal
JCS 1067 Joint Chiefs of Staff Directive 1067
KDP Kurdistan Democratic Party
MENA Middle East and North Africa
MCM Movement for Constitutional Monarchy
NDC National Democratic Party
NSPD 24 National Security Presidential Directive # 24
ORHA Organization for Reconstruction and Humanitarian Assistance
OSP Office of Special Plans
PBS Public Broadcasting Service
PUK Patriotic Union of Kurdistan
RCD Constitutional Democratic Rally
SCIRI Supreme Council for Islamic Revolution in Iraq
TJWG Transitional Justice Working Group
UNDP United Nations Development Programme
USIP United States Institute of Peace
VG The Vetting Public Employees in Post-conflict Settings: Operational Guidelines
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