

I. Kurds, Criminal Justice, and State Legitimacy

WELCOME TO SOUTH KURDISTAN

Sulaymaniyah is known as the intellectual and cultural capital of the Kurdistan Regional Government (KRG), the semiautonomous region of Northern Iraq. Upon arrival, you leave the heavily fortified airport and turn east down *سليم* (Salim, a street) and head into town. Immediately you pass the gleaming new classrooms and office buildings of the American University of Iraq in Sulaymaniyah, one of many expensive US projects in the area. Continuing a few kilometers down the freshly paved four-lane road, you enter Suly proper. In the distance, towering over the city, you can see the *شاري جوان* (Shari Jwan, Grand Millennium hotel), modeled after *برج العرب* (Burj Al Arab), the famous sailboat skyscraper of Dubai. The smooth blacktop takes you past a number of gleaming high-rises and beautiful storefronts selling the latest fashions and technologies, until you arrive at the historical bazaar in the center of the city. Were you to take Salim from the airport to the bazaar and back (as is a typical route for visiting politicians and dignitaries), you'd believe Suly is an incredibly prosperous city, free from the economic and political strife of the rest of the nation, a sure sign the reconstruction is delivering a prosperous new future to at least this corner of Iraq.

And to some extent, you'd be correct; Suly has a relatively prosperous economy and is much more secure and stable than most of the nation. But step out of the car and wander around the corner, down any side street off Salim, and suddenly you're confronted with a very different view. You quickly see that the gleaming façades of the stores and hotels are quite literally that; while the front side facing Salim is shiny and new, the other three sides of the building are likely drab, crumbling concrete that looks

ready to topple at any time. The roads stop being wide with fresh, smooth pavement and instead become narrow, neglected pathways marked by sizable potholes. Leaving the car and wandering the neighborhoods of the city quickly demonstrates the largess of Suly to be in many ways a Potemkin village of progress, a shiny façade masking a region and a nation embroiled by civil war, unemployment, financial crisis, and shortages of basic necessities.

In many ways, the projected extravagance of Salim serves as an apt metaphor for the reconstruction of the Iraqi criminal justice system. On paper, police training is a compact-yet-thorough introduction to the various important roles these men and women will be tasked with fulfilling. A quick drive-by view of the training process in action looks impressive, as rows of police march in unison, their stiff limbs swinging with military precision. Extravagant new courthouses and dozens of station houses appear to be the new government in action throughout the city. Yet step out of the metaphorical car, and these are revealed to be a façade as misleadingly flimsy as those on Salim.

This book is about stepping out of the car and exploring what happens behind the glistening façade. Previous scholars have examined the historical development of criminal justice systems and police forces¹ and established the importance of criminal justice reform to ensuring the stability of emerging democracies.² Yet few, if any, existing works examine the development of these as they occur, with some even arguing that to do so would be impossible.³ This work serves to demonstrate that it is possible to directly observe things like the training of police or the operation of criminal trials, and that doing so provides insights impossible to gain in any other way, allowing us to examine the unstable reality behind the shiny façade.

WHY CRIMINAL JUSTICE? WHY THE POLICE?

Police are known as the sole group in democratic society with a legitimate monopoly on the use of force, and as such, they occupy a central role in the construction and maintenance of social order. The police are the front lines of the state, as it is in confrontations and negotiations with the police—not the court system or the legislature—where constitutional rights are truly maintained or denied.⁴ Indeed, there is an old Iraqi saying that roughly translates to “laws are merely ink on paper,” neatly capturing the central argument of this book; while such things as the constitution or the legal code are obviously important to understanding the nature

of a state, no other group has the immediacy and material impact of the police. After all, few other governmental agents are “more active, numerous, or potentially intimidating than police officers.”⁵

As such, an understanding of the police and wider criminal justice system tells us a great deal not only about how a society is organized, managed, and policed—in both the narrow and broad definitions of that term—but about how a state wields and reproduces its power. However, existing scholarly works on the subject leave unanswered a wide range of questions regarding how emerging police forces make personnel and strategy decisions, who and what influences their goals and missions, and how the interplay between the development of the police, the wider criminal justice system, and the state is affected by immediate material concerns and external ideological influences.

I argue the lack of attention to police is a major oversight, as the constitution of a police force—especially in a newly reemerging state—is an important window for understanding both the particular state and the modern nation-state in general. The state’s assertion of sovereign power over matters of law and order has been an integral marker of modernity,⁶ and the police “show in concrete terms for whom and in what matter governmental power will be used.”⁷ The criminal justice system has long been employed for “little bursts of state-making,”⁸ as states have used the criminalization of large swaths of behavior to expand their power to control normative order. While many scholars are looking at this expansion of the carceral state and penalty in shaping a vision of a society and establishing power relations and normative order,⁹ most works have been confined to studies of the prison and its aftereffects,¹⁰ and nearly all of these studies have focused on Western nations.¹¹

As such, examining the recreation of a police force in a newly reemerging state grants important and unique insight into how that state is being designed to function. The modern state functions for the provision of general peaceable operating conditions, and it also has a powerfully origina-tive role in creating social norms and relations of production.¹² Although for the sake of legitimacy the state must allow some level of conflict and opposition, only certain conflicts are deemed legitimate forms of dissent,¹³ with much of this definitional work performed by the criminal justice system, police in particular. By studying the way order is defined and implemented, we are able to understand not only narrow questions of postconflict and democratic policing but larger questions of how the modern state defines itself.

Police are responsible for fulfilling a wide variety of functions, both

practical and symbolic. While these functions can be filled by a number of actors and agents (and indeed, currently *are* filled by a wide variety of nonpolice actors in Iraq), only the police are able to bring these various roles together in the legitimated manner required by the modern state.¹⁴ I use *legitimated* not to refer to the feelings of those involved or the moral stature of the codes being enforced but “merely to the correspondence between the uses of force and the rules which specify when it can and should be used.”¹⁵

Because of the immediacy of crime and the recent experience of exploding crime rates in Iraq, these policing functions are particularly important for state legitimacy; indeed, it is difficult to imagine an already stable, developed state maintaining legitimacy for long with its policing functions filled by a multitude of distinct, unconnected, and often hostile private interests. Because the police can and do touch on so many aspects of civil society and the lives of citizens, they become an integral way of consolidating and maintaining state power. As contemporary Iraq vividly demonstrates, without a rationalized police force filling the manifest goals of crime control and public order maintenance, along with the latent goals of state consolidation and legitimacy building, it becomes a nigh-impossible task to construct a legitimate state.

Beyond the sociological and theoretical implications of this work, the stakes are obviously high for the Iraqi state and the Iraqi people. The success or failure of the reconstruction project is quite literally a life or death situation, and its implications for the region are similarly grand. The federalist democracy favored by the international community requires not only stability but consensus between multiple ethnic, religious, and cultural groups.¹⁶ Central to this federalist project are the twin needs of the state for legitimacy and effectiveness,¹⁷ and the police are central to establishing and maintaining both of these.

In a nation being reconstructed in the shadow of a totalitarian dictatorship, it is especially the case that police are the most visible sign of the state for most people, as in the recent past police were directly used to carry out government control and repression in the most material of ways. As such, the Iraqi populace is uniquely conditioned to think of police as the face of government. Therefore, how legitimate the police are perceived as and how they are received serves as an excellent proxy for attitudes toward the state in general, and it can be meaningfully argued that the legitimacy of the police and how they are viewed determines in large part whether people view the state as legitimate or not.

It is important to remember that Saddam Hussein’s police, while cor-

rupt and brutal, were successful in controlling interpersonal street crime; prior to the invasion, Iraq had one of the lowest crime rates in the world.¹⁸ After the invasion, this oppressive order was replaced by a lawless anarchy of rampant crime and looting. Much of this stemmed from two simultaneous, disastrously mistaken assumptions on the part of the coalition; the first was in the assumption that simply overthrowing Saddam would win the support of a majority of the populace, despite there being considerable evidence to suggest this was unlikely to occur,¹⁹ and the second was the more direct mistake of assuming the existing Iraqi police would remain at their posts and continue to provide crime control while the coalition focused on battling the insurgency and reconstructing the state.

Neither of these came to pass—the popularity of the coalition never reached levels anywhere near the assumption of the invasion’s architects, and the members of the previous police force quickly abandoned their posts, with some choosing to simply fold back into civil society and many others joining the insurgency. The similarly disastrous de-Ba’athification process (in which all security officials associated with Saddam’s party were dismissed en masse) made roughly eight percent of the nation’s labor force idle overnight. Of course, these newly unemployed persons were not a cross section of Iraqi society, but instead precisely those most likely to join the insurgency, something which undoubtedly exacerbated the already chaotic conditions.²⁰ Compounding the problem of keeping order, coalition forces were directly instructed *not* to intervene in what were deemed law and order situations, leaving the nation without a police force for at least the first year and a half of the invasion. This complete vacuum of social control led to the looting of multiple government ministries and theft of millions of dollars in ancient antiquities, alongside a street crime rate that went from one of the lowest in the world to one of the highest almost overnight.

Beyond the obvious problems brought on by a dysfunctional criminal justice system largely incapable of providing crime control or justice, the lack of formal social control combined with drastically reduced state expenditures leaves a major vacuum waiting to be filled by anyone who can deliver what is normally expected of the state. In this case, the major power and service vacuums across the nation of Iraq were eventually filled by the Islamic State (IS),²¹ who run a “parallel administration” of their form of government,²² replete with taxes, schools, the provision of necessities, and even their own form of criminal justice. While the rise of IS is due to a wide variety of factors, which will be discussed later in the book, a central facet of their rise to power came through providing the mate-

rial necessities, security, and safety that the Iraqi state is either unable or unwilling to provide.²³

IRAQ POSTINVASION

Although it is not possible to give any sort of thorough summation of Iraqi sociopolitical history in this space, to understand the context in which the police force and criminal justice system are being reconstructed, one needs to understand two pervasive aspects of contemporary Iraqi life: an anomic feeling of lawlessness and a profound distrust of the government. Because of its existence as a pariah state cut off from the rest of the world under Saddam Hussein, Iraq “was like a cage for so long,” according to Ali, a young professor at the local university.²⁴ This was especially true in the KRG, which—even before gaining semi-autonomy in 1991—was always a low priority for the central government, when it wasn’t simply cut out of most state activities.

Although the methods and tactics they used would be endorsed by very few, the police under Saddam were able to maintain an incredibly low level of index-one crimes, or what are often called “street crimes,” such as robbery, burglary, and assault. One of the few things most Iraqis will give credit to Saddam for was the impressive level of crime control. Obviously there was rampant political, economic, and government crime, yet even among Kurds there exists a begrudging respect for Saddam’s crime-control efforts. As such, throughout Iraq people became accustomed to a virtually crime-free environment on the streets of their cities. However, with the inattention to police and crime control postinvasion, the crime rate skyrocketed, and many Iraqis began to experience street crime for the first time in their lives.²⁵ So in addition to the general chaos and fear associated with living in an occupied nation, Iraqis also had to deal with the sudden onset of high crime rates and the realization that little was being done to combat them.

It is difficult to overstate the dramatic changes the invasion brought to the lives of average Iraqis. In addition to the rampant crime, unemployment and food scarcity levels exploded in postinvasion Iraq, as over a decade of international sanctions had left many Iraqis almost entirely dependent on the Hussein government for basic necessities. As a result of the invasion, the Iraqi people quickly went from living under a strictly regimented dictatorial government, in which interpersonal crime was almost unheard of and most necessities came directly from the state, to an anarchic, stateless existence in which criminal predation runs rampant and basic necessities are often scarce and difficult to secure.

The perception of lawlessness and chaos is further fueled by the widespread corruption affecting nearly every aspect of Iraqi life. Although it is one of the largest energy-producing regions in the world, power is a scarce luxury in Iraq. On a typical day government power runs for two to three hours at most, with the rest of the time left to be filled by a personal or neighborhood generator if one is lucky enough to afford access to such things. Several days in a row, even weeks at a time, without power are not uncommon at all. Everyone you speak with is quick to blame this on government corruption, a perception exacerbated by the twin sights of kilometers-long lines for rationed gas at the pump next to similarly extensive lines of oil trucks heading for the border, where oil is sold illegally for higher prices.

Corruption is a barely hidden secret; most everyone I met, including politicians and public officials, complained to me about the rampant corruption, which mostly takes the form of bribes or nepotistic rewards for family members and political allies. As one local politician put it, the KRG is often like the Old West when it comes to the rule of law, noting “we have many Jesse James’s running around our nation.” Unfortunately, the police are no more immune to these sorts of corruption than are any other institutions. There were a great deal of stories about corruption at the academy and station houses, including experiences with so-called ghost payrolls, students who did not have to go through training before becoming police due to their family connections, and other nepotism and corruption being offered as the answer for why some people were able to climb the organizational ladder despite not possessing the necessary credentials or experience.

Some of these stories were especially telling about the role of corruption in current-day Iraq. One senior trainer at the academy relayed a story to me about the several months he spent in prison under Saddam, a time during which he was repeatedly and brutally tortured. He noted with bitter anger that the man who tortured him was not only never punished but remains a high-level prison official and is even responsible in part for producing the guidelines Iraqi prisons are to follow on the proper treatment of inmates. The phenomenon of well-connected individuals skipping police training and yet receiving high initial ranks had gotten so out of hand that the Ministry of the Interior had to issue a decree declaring that police of all ranks must attend at least one academy course.

Such lawlessness and corruption bear heavily on everyone throughout Iraq, most of whom—especially the Kurds—express severe distrust of the central government.²⁶ This is hardly surprising given that forty-plus years

of dictatorial rule gave way to a decade-plus civil war and a government that enriches itself and its members while much of the nation goes without basic necessities. This is true even more so for the younger generations. As a local legal expert explained over tea one afternoon, the older generations are less agitated “because they don’t know any better. They say ‘at least the Ba’ath party is not taking our sons away and killing them,’ but the younger generations are getting angry.” This prediction turned out to be quite prescient, as a few weeks after this discussion, Suly was gripped by massive anticorruption demonstrations, which were heavily orchestrated and attended by college students and unemployed young adults.

THE KRG AND THE GOI

While again there is not nearly sufficient space to fully detail the relationship between the Kurdish people and the Iraqi state, a basic understanding of the fraught relationship between the two is essential for understanding any aspect of Kurdish society or government. A constant feature of this relationship has been the oft-extreme antipathy between the two parties, with the best of times resembling more of a ceasefire than cooperation and the worst of times including outright war and ethnic cleansing. This is true whether we are talking about individual Kurds, Kurdish political parties, or the semi-independent KRG, and whether we are referencing their feelings toward the existence of an Iraqi state as such, their inclusion within such a state, or specifically the current Government of Iraq (GOI).

This antipathy between Kurds and the Arab governments of the region significantly predates the creation of the Iraqi state, with Kurdish rebellions against the political dictates of Baghdad stretching back to at least 1772,²⁷ but most recently it came to the fore after the formal ascension of Saddam Hussein to the presidency of Iraq in 1979. During his time in power, Saddam launched multiple campaigns against the Kurdish people, such as his Arabization program which sought to destabilize Kurdish solidarity and communities, especially in oil-rich areas like Kirkuk, through the forced deportation of Kurds from their homes and the building of large tracts of low-cost housing for Arab Iraqis moving in from “the south,” as Kurds generically refer to the rest of the nation. This disrupted Kurdish communities in a multitude of ways while also undermining their moral and political arguments of sovereignty over Kurdish territories. The ongoing impact of the Arabization program is readily evident in the dual names of Kurdish cities on most maps; while referred to exclusively by their

Arabic names in official government documents, most Kurds refer to these places by their traditional Kurdish names. As such, many maps will list both names, such as the city where I do most of my research appearing as both the Arabic Sulaymaniyah and the Kurdish Slemani, or the capital city of the KRG being listed as both the Arabic Erbil and the Kurdish Hewler.

The most devastating anti-Kurd actions taken by the Hussein government formed the genocidal Anfal campaign, which took place over several years during the late 1980s. The term literally translates to “the spoils,” referring to Koranic text detailing the spoils of war. The Anfal campaign involved a number of military actions directed at civilian populations, most notoriously the poisonous gas attacks on the Kurdish town of Halabja, which killed somewhere between three thousand and five thousand civilians.²⁸ Additionally, there were wide swaths of the Kurdish region in which large numbers of citizens were detained in camps, with most adult-age males murdered and dumped into mass graves. The Human Rights Watch report on the Anfal campaign noted that a central purpose of the campaign was to exterminate all military-service-age men in rural Iraqi Kurdistan.²⁹

A reason for the focus on rural Kurdistan, especially its mountainous regions, is that these are the strongholds of the *البشمركة* (Peshmerga, “those who face death”), the Kurdish revolutionary forces who waged independence campaigns and defended Kurdish territory from the Iraqi government. Peshmerga fighters were often based in the harsh and craggy mountains of Kurdistan, as a combination of difficult terrain and superior indigenous knowledge of the geography made the mountains a safe haven for both resistance fighters and civilians fleeing the Iraqi police or military. Indeed, so important are these mountains to this isolated and beleaguered people that an old Kurdish adage holds, “The Kurdish people’s only friends are the mountains.”

Yet even when Kurds were not being subject to ethnic cleansing, they were treated at best as second-class citizens by the Hussein government. This occurred in ways both severe and mundane, and most everyone over the age of thirty has plenty of stories of both. The detention, torture, execution and/or disappearance of friends and family is simply a fact of life for several generations of Kurdish Iraqis. Many have their own stories of having been detained and tortured, such as a police trainer at the academy who removed his boots during our interview to show how his feet had become deformed after being hung by them for weeks while being tortured, or a friend who gave me a tour of the infamous Red Prison (a prison in Suly that Saddam used to detain and torture political dissidents), blithely

noting the room where he had been tortured, which was next to the room where his father had been executed.

Even in the small matters of everyday existence that did not carry such heavy consequences of life and death, Kurdish Iraqis would be abused and denigrated by the Iraqi government. I heard many stories of how any time a Kurdish person had to deal with government officials, they could expect to be ordered to the back of the line multiple times, while almost certainly being berated or belittled by the staff and regularly just denied service. What would otherwise be a short drive from one city to the next would often end up taking all day, as Kurds were detained at checkpoints for little reason other than being Kurdish.

Although the list of offenses committed by the Iraqi state against the Kurdish people could fill volumes, this should suffice to illustrate why the Kurds of Iraq place such little trust and faith in the central government. Despite the ouster of Saddam Hussein and the formal recognition of Kurdish rights in the federal constitution, the relationship between Kurds and the central government has improved little. While the violence has greatly decreased, many of my friends and research respondents still report being denied certain government services or being detained for significant periods for no apparent reason outside of the KRG. Even more pressing, many of the criminal justice officials I spoke with for this project felt there was little coordination or even basic information sharing between the KRG and the GOI, and many were quite happy to keep it that way.

Although the federal system of government requires at least a minimal form of cooperation and the maintenance of a certain level of a working relationship, even sharing a common enemy and facing a threat as great as the Islamic State has done little to improve the working relationship between the two governments. According to media reports and my own respondents, the coordination in the fight against IS has largely been restricted to shared knowledge of troop positioning and movements so as to avoid friendly fire.³⁰ Otherwise, the two have been fighting as essentially separate nations, despite their ostensibly shared federal government and presumed shared interest in defeating the organization. Practically this has not had a terribly large effect, as GOI forces continue to have significant operational deficits and little to offer in such a fight, and thus in a certain sense *Peshmerga* forces were always going to have to shoulder the burden of defeating IS. Yet the inability to meaningfully come together in the face of such an existential threat to the continued existence of both speaks volumes about the relationship between the KRG and the GOI.

LIFE IN THE KRG

The KRG is the portion of traditionally Kurdish lands that fall within the borders of Iraq. It is known to many Kurds as South Kurdistan, given that it represents the southern area of Kurdish lands, with East Kurdistan falling in Syria, North Kurdistan in Eastern Turkey, and West Kurdistan within Iran. It is also sometimes known as Free Kurdistan due to its status as the closest thing to an independent Kurdish state in existence. The KRG has been in a limbo of semi-independence since the conclusion of the first Gulf War in 1991. The region maintains a fair bit of independence yet is subordinate to the federal government in a number of important ways. The boundaries of this relationship are quite malleable, with both sides regularly testing them, as Kurds continue to push for becoming an independent state and the GOI regularly seeks to limit the powers granted to the regional government and even to dissolve the KRG.

It is unquestionably clear that the vast majority of Kurds favor independence from Iraq, as every referendum held on the question of seceding from the nation has garnered “yes” votes in the 80–90 percent range.³¹ Yet a variety of factors makes such independence incredibly unlikely in the near future, or even within the next generation, for reasons including the region’s limited industrialization and the hostile foreign powers surrounding it, the inevitable dispute over oil-rich Kirkuk, and probably most importantly the Kurds being central to the American project in Iraq.³² Furthermore, Kurds have been able to achieve some fairly impressive concessions from the federal government, which of course would immediately dissolve upon independence.

While these various factors mean Kurdistan offers only a partial glimpse into Iraq as a nation, they also make the KRG essentially a best case scenario for the prospects of the reconstruction project: the region is relatively safe, stable, and prosperous, and Kurds—far more than any other group within Iraq—hold the most positive views of Americans and the coalition. As such, the reconstruction process has gone much more smoothly in the KRG than elsewhere in the nation.³³ Simply put, nowhere in Iraq provides a better opportunity for America and its coalition partners to successfully implement the policies, practices, and institutions they want.

Yet despite the important differences, there is much the KRG shares with wider Iraq in terms of its present situation and the challenges it faces. Like the rest of the nation, unemployment is a major problem throughout the KRG. While concrete numbers are hard to come by, most estimates put