For the Love of Humanity

The World Tribunal on Iraq

Ayça Çubukçu

For the Love of Humanity

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Anneme ve Babama

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It takes a lot of things to change the world:
Anger and tenacity. Science and indignation,
The quick initiative, the long reflection,
The cold patience and the infinite perseverance,
The understanding of the particular case and
the understanding of the ensemble;
Only the lessons of reality can teach us to transform reality.
—Bertolt Brecht

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Introduction

> Is not the setting up of a neutral institution standing between the people and its enemies, capable of establishing the dividing line between the true and the false, the guilty and the innocent, the just and the unjust, is this not a way of resisting popular justice? A way of disarming it in the struggle it is conducting in reality in favor of an arbitration in the realm of the ideal? This is why I am wondering whether the court is not a form of popular justice but rather its deformation.
>
> —Michel Foucault, "On Popular Justice: A Discussion with Maoists," February 1972

> Before the testimonies begin, I would like to briefly address as straightforwardly as I can a few questions that have been raised about this tribunal. The first is that this tribunal is a kangaroo court. That it represents only one point of view. That it is a prosecution without a defense. That the verdict is a foregone conclusion. . . . Let me say categorically that this tribunal is the defense. It is an act of resistance in itself.
>
> —Arundhati Roy, "Opening Speech on Behalf of the Jury of Conscience of the World Tribunal on Iraq," June 2005

It was February 15, 2003. Millions of people around the world were demonstrating against the war the United States, the United Kingdom, and their allies were planning to wage in Iraq. Marching in New York City, I was one of them. Despite the largest protest in human history,[1] the war on Iraq began rapidly on March 19, 2003. That summer, I was twenty-three. I recall the night

I was first told about the World Tribunal on Iraq, yet to be named. It was in Istanbul. Three women—two friends in their forties, a translator, a publisher, along with a graduate student in her early twenties—asked me to participate in an international effort, which they described with palpable passion.

Numerous individuals and groups active in the global antiwar movement, the women said, were planning to put the United States, the United Kingdom, and their allies on trial for crimes committed during the invasion and occupation of Iraq. If official institutions of international law failed to act, they declared, then global civil society had the right and the duty to form its own tribunal to tell and disseminate the truth about the Iraq War. As the novelist John Berger had asserted of the need to found such a tribunal, "the records have to be kept and, by definition, the perpetrators, far from keeping records, try to destroy them." Someone had to chronicle the untold death and destruction that the war would bring. Someone had to record the great opposition to this war, "so that the accusations become unforgettable, and proverbial on every continent," Berger had said.[2] For this daunting task, these three women had volunteered themselves.

That summer night, they asked me if I had heard of the Russell Tribunal on Vietnam.[3] I hadn't. They asked me if I would return to New York City, where I was doctoral student at Columbia University, to help organize a tribunal on Iraq there. Many tribunal sessions would occur around the world and culminate with a final event in Istanbul, they explained. I was astonished by the enormity of the effort, by its daring ambition, the commitment, the time and the labor it would demand. I was provoked by the questions it raised. Who were *we*? And who were we to constitute such a tribunal on Iraq? Would we act critically in the face of international law or endorse its pretensions? Could the tribunal become grassroots in character? And what would this tribunal look like, what language would it speak?

* * *

It was June 27, 2005, about seven o'clock in the morning. From the roof terrace of the Armada Hotel, overlooking the Golden Horn and the Blue Mosque of Istanbul, I could observe satellite-broadcasting trucks lining the street below. Soon, the World Tribunal on Iraq was to hold a press conference to present its judgment and declaration. At that very moment, the text of the declaration


AKŞAM
AKŞAM TÜRKİYE'NİN GAZETESİ 28 HAZİRAN 2005 SALI 25 YENİ KURUŞ / 250 BİN LİRA
KÂR PAYLARIMIZ
AKŞAM'DAN
Sabancı Telsim'le ilgileniyor
Bulgar Meclisi'nde ikinci Jivkov vakası
Çeşme'de hezimetli deniz savaşı için müze
Sinemacılar yarıyıl tatilini uzatmak istiyor
VİCDAN MAHKEMESİ KARARINI AÇIKLADI
BUSH VE BLAIR SUÇLU
İstanbul'daki gıyabi yargılamada iki dünya lideri 'mahkum' oldu. Vicdan Mahkemesi 'Irak'tan çekilin' çağrısı yaptı
DÜNYA BASINI KARARI İZLED
'ÇEKİLMEK YETMEZ TAZMİNAT ÖDENSİN'
Erdoğan'a düğ davetiyesi götü
Rubin'in sözleri AKP'yi kızdırdı
'Dünya nefret ediyor'
Kişisel görüşü 26
Nurcan hedefi onikiden vurdu

Figure 1. "Tribunal of Conscience Declared Its Judgment: Bush and Blair Guilty," *Akşam*, June 28, 2005. Photo by the author.

(drafted in English) was passing from the hands of one translator to the next.[4] The novelist Arundhati Roy, spokesperson of the tribunal's Jury of Conscience, would, in a few hours, lead the way into the hotel's conference room, accompanied by thunderous applause and slogans echoing in multiple languages. Two hundred journalists, international and local observers, and dozens of cameras and recorders had packed the room beyond limits. Several of these journalists would see their names just below the headlines of their newspapers the next morning, as "the news" would break in large and bold letters on the front page: "Tribunal of Conscience Declared Its Judgment: Bush and Blair, Guilty."[5]

The story I tell in *For the Love of Humanity* is based on two years of fieldwork with the transnational network of antiwar activists who created the World Tribunal on Iraq (WTI) from the autumn of 2003 through the summer of 2005 in some twenty cities around the world. I was a "participant observer" during the conceptualization and practical formation of the WTI, committed as an activist and anthropologist at once.[6] The antiwar activists I worked

with—hundreds of them living continents apart—were lawyers, journalists, scholars, NGO workers, students, musicians, translators, scientists, editors, artists, filmmakers, writers, teachers, and the unemployed. They belonged to three different generations and spoke in English—and in Turkish, Arabic, Danish, French, Flemish, Dutch, Japanese, Korean, Hindi, Urdu, Malayalam, Italian, German, Spanish, Portuguese, Hebrew, Swedish—with each other.

In the absence of official institutions of justice willing or able to perform this task, the World Tribunal on Iraq established a transnational platform where the war on Iraq could be publicly judged. The WTI's ultimate session in Istanbul became a global public event, receiving considerable media attention throughout the Middle East and "alternative media" coverage worldwide.[7] Its proceedings were later published as two separate books in Turkish and in English,[8] while a number of documentaries preserve for the record other public hearings produced by the tribunal over its two-year existence.[9]

Within the tradition of "civil society tribunals," the World Tribunal on Iraq was unprecedented in its global scale, scope, structure, and sophistication.[10] Founded with the principal purpose "to tell and disseminate the truth about the Iraq war"[11] and to create an alternative historical record of Iraq's occupation, including the worldwide resistance to it, the WTI was produced through a decentralized, nonhierarchical network of transcontinental cooperation. In this important respect, namely its organizational form, the WTI was exceptional within the tradition of civil society tribunals.

Before Istanbul, the WTI network had conducted numerous sessions around the world and registered untold violations committed by the occupying forces in Iraq. While diverse in process and procedure, hearings associated with the WTI were organized in Barcelona, Brussels, Copenhagen, Frankfurt, Genoa, Istanbul, Lisbon, London, Mumbai, New York, Rome, Seoul, Stockholm, and several cities in Japan.[12] In this way, the WTI constructed a globally networked stage where the consequences of Iraq's occupation were demonstrated. During the tribunal, countless testimonies were offered by eyewitnesses to the invasion and occupation of Iraq, by international lawyers arguing that the war on Iraq was illegal, and by many journalists, scholars, and activists who all documented, contested, and often protested the reasons and consequences of Iraq's occupation.

I was particularly active during the many months of preparation for the World Tribunal on Iraq's early session in New York City (May 2004) and for its final session in Istanbul (June 2005). Participating in the conduct of multiple tribunal hearings and meetings in six different cities—Brussels, Paris,

Kyoto, Mumbai, New York, and Istanbul—allowed me to analyze the commitments and tensions animating the WTI's laborious cosmopolitics. It is on the basis of this intimate engagement with the WTI that I offer critical reflections on the tribunal's (and my own) praxis of transnational solidarity over two crucial years.

The World Tribunal on Iraq activists confronted many dilemmas during those intense years of political debate and action, which they negotiated in the context of a comparable politics of human rights and international law concurrently enacted by institutions that did not (unlike themselves) wave the flag of anti-imperialism. To address this predicament, I examine as well Amnesty International, Human Rights Watch, and the Iraqi High Tribunal in the context of Iraq's occupation. Engaging in this wider analysis allows me to present a stronger argument for our pressing need to reevaluate, ever more critically, the relationship between law and violence, empire and human rights, cosmopolitan authority and political autonomy. To this end, I demonstrate how and why a potent critique of the politics of human rights and international law must rethink the legal distribution of violence globally and reconsider the proper commitments of internationalism, including its dedication to political autonomy.

The World Tribunal on Iraq remains a seminal exercise in transnational solidarity and political philosophy. So I convey the complexities attending its praxis, including the tribunal's global form of organization as an open network that functioned horizontally. Thinking alongside key jurists, theorists, and critics of global democracy, I situate disagreements among WTI activists philosophically, politically, and historically and demonstrate how they exemplify well the impasses of a transnational politics of human rights with anti-imperialist commitments. These impasses are particularly difficult to resolve when they concern the virtues of self-determination—that is, the problem of autonomy—in relation to the violent universalism of an international law that attempts to govern humanity with the promise of peace and justice.

Methodologically, I enact a model of scholarship that combines ethnographic work on global political action with close readings in political theory. The WTI's praxis was provocative on several counts. I approach the global constitution of the WTI by hundreds of persons and organizations embedded in national and local antiwar movements as fertile ground to explore the paradoxical politics of human rights and international law at the turn of the twenty-first century. The context is the thorny geography of cosmopolitics, on whose grounds, wars, occupations, and antiwar movements alike are waged

through the language of human rights and international law, in the name of freedom, liberation, and democracy.

I explore situations where the language of human rights and international law is particularly able to bear what political theorist Nancy Fraser defines as "discourses of abnormal justice."[13] According to Fraser, discourses of abnormal justice reflect the destabilization of a prior hegemonic grammar, whereby the what, the who, and the how of justice become subject, at once, to substantive debate.[14] To date, there is hardly a more revealing *global* case of "abnormal justice"—a legitimation crisis, in the lexicon of Jürgen Habermas—than that evidenced by the occupation of Iraq. In that moment of crisis recognized and augmented by forces of anti-occupation resistance worldwide, particularly in Iraq, WTI organizers produced public debate on the what, the who, the how, as well as, I add, the why of justice.[15] On a globally networked stage, the World Tribunal on Iraq placed the grammar of global justice at stake.

Through a detailed analysis of the WTI, I interrogate cosmopolitan politics occasioned by the occupation of Iraq to examine the antinomies of this politics for establishing a theoretically grounded understanding of its lasting dilemmas and persistent dangers. In particular, I demonstrate how and why ideals of human rights and international law become entangled with the violence of imperial practices. The growing hegemony of a cosmopolitanism that can endorse the use of violence by many means—in Afghanistan, Iraq, Libya, and Syria to offer a few examples—because it is dedicated to the idea of peace, renders the paradoxes I pursue all the more relevant as they continue to inflect and inform global politics.

While in most of the book I focus on cases of disagreement within the WTI network, I hereby aim to reveal how they reflect competing understandings of justice, legitimacy, and authority imagined in response to the occupation of Iraq. But also, along the lines of Richard Falk—jurist of international law, theorist of cosmopolitan democracy, and spokesperson of the Panel of Advocates at the WTI's final session in Istanbul—I consider the translingual, transgenerational, transcontinental, transformative travail that was the WTI as "an experiment from the perspective of achieving global democracy."[16] If the result of this experimental demonstration is an agonistic, yet dialogical polyphony, this, I suggest, is a symptom of a crisis afflicting what Carl Schmitt called "the *nomos* of the earth,"[17] the principle of legitimacy orienting the world. More specifically, the cosmopolitical dilemmas I examine expose, left and right, a limit afflicting the democratic idea since its inception: the limit between the universality of principles posed within the horizon of humanity

and the particularity of autonomies of decision constituted in the form of popular sovereignty.[18]

Consequential for the inquiry offered throughout this book is the decision to posit on a single plane of consideration the cosmopolitics of the WTI network *and* the cosmopolitan principles that affirmed the constitution of a democratic Iraq before or after the fact of its occupation. I thereby highlight revealing commonalities between the two sides of the war of legitimacy over Iraq's occupation: those who proposed and those who opposed it. I remain convinced that implicit commonalities and convergences between adversarial camps are as telling as explicit disagreements and divergences.

As foreseen by Jacques Derrida in an interview reflecting on the World Tribunal on Iraq, the debates I narrate were underwritten by a crisis in which WTI activists were not "able to avoid talking about sovereignty, about the crisis of sovereignty."[19] I suspect this crisis is not unrelated to a core question that orients the thoughts to follow: *why* do we care about justice, about the freedom and the happiness, the life and the death of each other, here and there? An answer offered by the World Tribunal on Iraq could be: for the love of humanity.

* * *

In May 2003 two philosophers—Habermas and Derrida—published a joint appeal in two prominent German and French dailies of the liberal Left.[20] If not a philosophical one, between the two a "tactical alliance" was forged to address, exclusively, the European public sphere. The spectacular event of inspiration was the global demonstrations of February 15 against the impending war. Selectively reflecting on the day's manifestation in "the core of Europe," however, Habermas and Derrida read this day to assert a European identity in the singular, coupling it with the hope for a global domestic policy that would "defend and promote a cosmopolitan order on the basis of international law."[21]

The same May in Jakarta, hundreds of activists who had helped organize the February 15 protests composed the "Jakarta Consensus" and addressed a global public in the singular.[22] There, empowered by the demonstration of their own power around the world in February,[23] and despite the beginning of the war in March, elements of a global antiwar constituency arrived at several

strategic decisions. For one, the idea of "holding a war crimes tribunal was endorsed as among the must-do tasks of the movement."[24] The following month in June, the task was already assumed in other gatherings of the global antiwar movement in Berlin, Brussels, Cancun, Geneva, and Paris: those who were separately yet simultaneously inspired to constitute a civil society tribunal had begun to connect and coordinate with one another.[25]

"First, I would like to tell you that I am not going to give my testimony in English, because it is the language of the occupiers."[26] With this sentence pronounced in Arabic before some five hundred people in the audience—and countless others witnessing her testimony live on the radio, television, and Internet through simultaneous translation in Turkish and English—Nermin al-Mufti began her testimony before the WTI's final session in Istanbul. Al-Mufti's testimony was one among fifty-four presentations delivered by a Panel of Advocates and witnesses before a Jury of Conscience from across the world.[27] Considering "the problem of global justice,"[28] what is the significance of this testimony from Iraq, which asserted "the Occupation as Prison"?[29] What is the meaning of the myriad cases made before the WTI by lawyers, scholars, and activists to evidence the illegality and the illegitimacy of the occupation of Iraq? And what status could be claimed for the World Tribunal on Iraq itself—according to which geography of legitimacy, which global justice, law, or society?

Writing for *Le Monde Diplomatique*, Richard Falk argues, "In the absence of formal action on accountability, such informal initiatives [as the WTI] fill a legal vacuum, at least symbolically, and give legitimacy to non-violent antiwar undertakings."[30] Elsewhere, dedicating a chapter of his book to the WTI, Falk reiterates his jurisprudential rationale for the tribunal, appraising that its "claim of authority is to some extent ex nihil—that is without constitutional or positive law foundations. It rests on an ethos of concern and responsibility for fundamental law and morality . . . expressive of the impulse to feel, think and act as a global citizen in an increasingly globalizing world."[31] Nonetheless, when it comes to claims of global authority, cross-examination reveals crucial convergences between the two sides of what Falk calls "*the legitimacy war* that often ends up shaping the political outcome more than battlefield results."[32] For one, how can the cosmopolitan ethos of concern and responsibility predicating the legitimacy of the WTI be distinguished from the cosmopolitan ethos that conferred legitimacy, ex ante or ex post facto, to the constitution of a "liberated" Iraq?[33] In the rest of the book, I reflect on this question by examining foundational and consequential debates among WTI activists, including

disagreements on the "sources" of the tribunal's own authority and legitimacy.

Before proceeding with this analysis, however, I should observe that the tensions and difficulties of distinction I examine here emerge in various related contexts and cases. First and foremost, they attend any attempt to critically address the paradox that the war on Iraq, as well as its occupation, were at once opposed and proposed in the name of universal human rights. In addressing this situation, many scholars, including some of those involved in the WTI processes, have asserted the abuse, the hijack,[34] or the instrumentalization[35] of human rights ideals and cosmopolitan dispositions by those pursuing a distinctly imperial project. Thus, evaluating the rhetoric that legitimated the invasion of Iraq, a cosmopolitan sociologist concludes, "this was undoubtedly a hollow, cynical and opportunistic appropriation of human rights discourse emptied of all substantive content."[36] Rarely with exceptions, the promulgators of what I call the *instrumentalization thesis* proceed to affirm, in contrast, the authenticity of their own commitment to human rights and cosmopolitan solidarity. On the other hand, while some intellectuals of the Left dismiss the discourse of human rights as such, precisely on account of its propensity to be *used* as a justification for imperialist ventures,[37] others have insisted along with Derrida that "we must [*il faut*] more than ever stand on the side of human rights."[38]

I argue that in cases made through the instrumentalization thesis, neither the reasons nor the consequences of the particular vitality of the cosmopolitan ethos of human rights in justifying imperial war and occupation emerge as proper subjects of interrogation. If evidence were needed of this vitality, one could turn to passionate arguments reasoned in support of Iraq's occupation "by those of liberal disposition who wrestled with their consciences and took a stand in support of the liberation of Iraq."[39] In fact, analyzing the democratic reasoning of the occupation forces, Samera Esmeir, a legal scholar, is correct in arguing that "the war on Iraq was carried out *for* the law, the specific law of juridico-democracy."[40] The conclusion must also be drawn with her that this "rhetoric" of democracy, rule of law, liberation, and human rights needs to be interrogated on its own terms. For her part, Esmeir considers how the promised nonviolence of juridico-democracy operated as an ideal that produced the occupation's violence in Iraq. What I wish to highlight instead are the dispositions, ethos, and commitments of cosmopolitanism, which the promise of democracy mobilized to legitimate Iraq's occupation. I am concerned, in other words, with the cosmopolitan commitments rallied by the

revolutionary attempt of the George W. Bush administration, its ancestors, and heirs "to impose political democracy through military force and to use democratization as the ideological arm of a neoimperial project."[41]

In a situation where "the continuous slide of cosmopolitan ideas towards empire is one of the dominant motifs of modernity," as critical theorist of international law Costas Douzinas asserts, the insufficiency of the instrumentalization thesis as a form of critique is particularly consequential.[42] It is with acute awareness of this historical context that I insist: posing the problem as one of insincere instrumentalization of otherwise unproblematic ideals occludes confronting the constitutive entanglement of cosmopolitanism—including its assertions of humanitarian responsibility and care, and promotions of human rights and democracy everywhere—with imperial practices. The universal ideals of cosmopolitanism, in other words, are not merely the ruse of imperial politics. Their relationship, often mediated by violence, is more intimate and complex than the instrumentalization thesis suggests.

Political theorist Andrew Arato discusses such an entanglement in his essay "Empire's Democracy, Ours and Theirs," in which he explicitly delimits *us* to "all those to whom the norms and values of democracy, human rights, civil society and the public sphere remain the unsurpassable ideals of the present historical epoch."[43] Building his argument, Arato first observes that the language of democracy and human rights, performing within the motif of democratic regime change, replaced the threat of weapons of mass destruction as the primary logic justifying the war on Iraq. Second, he asserts that even if democracy and human rights may not have been "the real reasons" underpinning Iraq's occupation, once in operation as an ideology of justification, they carry their own particular force. I further contend that in cases of "occupation for liberation,"[44] the claim that ideals of human rights are insincerely instrumentalized cannot fully counter the ideological force of human-rights-based justifications of occupation. This is especially the case, in Arato's designation, "when people suffer from dictatorship."[45]

Thus, even if the United States administration may not have been truthful in its justification of the war and occupation as serving to foster human rights in Iraq, to the extent that "we" were interested in the latter end, this justification's power over "us" remained in force. Arato manifests the stakes of this power when he claims: "it seems undeniable that in the midst of all that was wrong with the war, the overthrow of the Saddam regime and the freeing of political energies in Iraq were, (very) abstractly considered, a good thing."[46]

And the difficulty, (very) concretely considered, arose to the extent that the intended or unintended democratic *effect* of the war on Iraq, both as promise and as consequence, was itself desirable for "us." How to draw a line then, between what Arato calls "the *imperial* democratization project and *ours*"?[47] What is this democracy, and who were "we"?

If the effective ends of imperial practices (say, the overthrow of Saddam Hussein in Iraq or Bashar al-Assad in Syria) and the desired ends for "us" potentially correspond, what is the difference between "the *imperial* democratization project and *ours*" beyond an occasional dispute over the proper means? This question is unperturbed by the finding that "in reality" the results of empire's interventions turn(ed) out to be undemocratic. To the extent that desire and support for intervention precede the realization or failure of its promise, the anticipated result, the expectation of its realization already configures the substance of the promise as an effective force now—actualizing the promise "to deliver human rights" as an effective reality in the present.

Thus, in order to articulate with clarity the difference, if any, between "the *imperial* democratization project and *ours*," it is necessary that the potential congruence of effective ends between adversarial camps be affirmed rather than negated (especially in principle). Along with the anthropologist Talal Asad who argues, "motives in general are more complicated than is popularly supposed and . . . the assumption that they are truths to be accessed is mistaken,"[48] I suggest that it may be necessary to bracket the problem of "true motivation" in cases of war and occupation legitimated in the name of human rights, as in Iraq. Not because "ulterior" motives are lacking, but because it is especially revealing to evaluate the promise to deliver human rights on its own terms.

Political theorist Wendy Brown is a rare scholar of the Left who has not hesitated, at least in passing, to signal this need. Considering Donald Rumsfeld's declaration in 2002 that "the War on Terror is a war for human rights," she finds: "It is not only that Rumsfeld has co-opted the language of human rights for imperialist aims abroad and antidemocratic ones at home, but that insofar as the 'liberation' of Afghanistan and Iraq promised to deliver human rights to those oppressed populations, it is hard both to parse cynical from sincere deployments of human rights discourse and to separate human rights campaigns from legitimating liberal imperialism."[49] What accounts for the posited difficulty of distinguishing the sincere from the cynical here, if not what remains implicit in Brown's formulation, namely, the very possibility that the promise to deliver human rights may in fact be fulfilled by liberal

imperialism? It is in the context of this troubling possibility that *For the Love of Humanity: The World Tribunal on Iraq* provides an ethnographically grounded, critical analysis of the politics of human rights, international law, and cosmopolitanism in the early twenty-first century. This troubling possibility is also why among the primary concerns of this book are the vectors of convergence and divergence between *imperial* mobilizations of international law, human rights, and ideas of humanity on the one side and *anti-imperial* ones on the other.

* * *

Years after the conclusion of the World Tribunal on Iraq, an important question remains: What is the enduring significance of the WTI today? First of all, we can expect the tribunal *form* itself to be continually mobilized by activists in local and global politics. Today, from the Russell Tribunal on Palestine to the Tribunal 12 on migrant rights in Europe, we see proliferating examples of political action that assume the form of a public tribunal. Because the World Tribunal on Iraq was a conscious experiment with the tribunal form itself—deconstructing its own employment of this form in the very act of making use of it—its example is of particular relevance for activists and scholars who may wish to mobilize, develop, or critique the tribunal form in the present and future.

Further, neither the language of human rights and international law nor the eagerness to engage in practices of transnational solidarity is leaving the scene of global politics. If anything, given persistent calls for humanitarian intervention (in Syria, to name one example) and the emergence of various uprisings around the world, human rights and international law are only gaining further currency as the lingua franca of global politics and transnational solidarity. As the perplexities of liberal thought and practice negotiated by WTI activists on the battlefield of cosmopolitics remain in place, two intense years of political action offer tested strategies for navigating a global terrain of struggle saturated with the language of human rights and international law—a language that is spoken, all too often, without adequate reflection. It is in this context that the praxis of the World Tribunal of Iraq remains provocative because of its elaborate and creative engagement with the grammar of this language of global peace and justice.

Ultimately, through an analysis of the World Tribunal on Iraq, I probe the paradoxes, perplexities, and the potentials of this transnational praxis in order to clarify, as far as currently possible, the political, legal, and philosophical problems posed by the "liberation" of Iraq by the United States, the United Kingdom, and their allies. And I do so by challenging the constraints of contemporary liberal thought. In fact, *For the Love of Humanity* does not shy away from exploring how and why—and with what perverse effects—politics is articulated in the name of humanity, its rights, and its laws in the twenty-first century.

With this aim, each chapter explores the language of political action spoken by WTI activists and their adversaries. Chapter 1, "Constituting Multitude: Founding a World Tribunal," offers an ethnographic account of the WTI's founding meeting in Istanbul. At question are the grounds of the tribunal's authority and the "sources" of its legitimacy. Based on my participation at this three-day encounter and a retrospective analysis of its meeting transcripts, I examine the moment of self-authorization of a "world tribunal" to raise questions about the political constitution of global civil society—a multitude—in action. I argue for the need to attend carefully to persistent tensions between *legalist* and *political* imaginaries that animate rival visions of global peace and justice.

In Chapter 2—"Whose Tribunal?"— I expand my analysis of the World Tribunal on Iraq comparatively and explore the human rights politics enacted by the Iraqi High Tribunal (which sentenced President Saddam Hussein of Iraq to execution) and the limited way in which Human Rights Watch criticized this tribunal inaugurated by the United States in the aftermath of Iraq's occupation. To ground the comparison, I provide an account of the WTI's culminating session in Istanbul. Throughout this chapter, I pose a common set of questions with respect to both tribunals in order to reveal some of the perplexities they share. These perplexities emerge, I argue, on account of the contentious nexus between law and violence on the one hand, and the competition between universal and national paradigms of justice on the other.

"Constituting Constitutions: The Fact of Iraqi Constitution, the Fatalism of Human Rights" is the third chapter, which reconstructs the ultimate controversy among the global network of activists who created the World Tribunal on Iraq. The particular dispute I analyze was sparked in 2005 by a specific campaign of Amnesty International demanding a "human rights based constitution in Iraq." When some WTI activists wished to condemn Amnesty International for legitimating with this campaign an illegitimate constitutional

process initiated by the military occupation in Iraq, other tribunal activists disagreed with such a condemnation. Reconstructing this debate, I map its stakes along the contours of the political rivalry between "humanity" and "citizenry" as constitutional subjects, as I continue to highlight disputes about the lawmaking capacity of violence.

In the fourth and last chapter, " 'Humanity Must Be Defended,' " I address liberal political visions that propose to institutionalize an allegedly egalitarian, novel, and superior form of cosmopolitan law in contradistinction to "classical" international law. Here, reflecting on a dramatic cross-examination at the WTI's inaugurating session in Brussels, I analyze NATO's 1999 military intervention in Kosovo and the framework of the Responsibility to Protect doctrine to argue that the liberal endorsement of this "exceptional" title provides the proper context for assessing cosmopolitan responses to the occupation of Iraq. I then turn to the colonial origins and structures of international law to evaluate contemporary cosmopolitan aspirations in the field of international law, which were shared by many (but not all) activists and jurists affiliated with the World Tribunal on Iraq. Ultimately, contrary to most cosmopolitans, I argue that "law's empire" is not an alternative to, but an articulation of "empire's law."

CHAPTER 1

Constituting Multitude: Founding a World Tribunal

Introduction

On an autumn morning in Istanbul, on October 27, 2003, twenty people were engaged in a passionate debate around a table.[1] They had arrived from Jerusalem and Stockholm, from Tokyo and Tunis, from New York and Bangkok, from London and Izmir, from Copenhagen and Genoa, from Brussels, Hiroshima, and Baghdad. All had come to Istanbul for a three-day meeting. This could have been just another corporate or diplomatic conclave, one of many simultaneously taking place around the world. Yet these women and men who spoke in English—for the most part, their second or third language—these "activists"[2] who were teachers, publishers, engineers, translators, lawyers, scientists, academics, NGO workers, journalists, and filmmakers had gathered together to found a global civil society tribunal. Their principal goal was to document, "for the record,"[3] crimes and violations committed by the United States, the United Kingdom, and their allies during the invasion and occupation of Iraq, which had begun only a few months earlier.

When the World Tribunal on Iraq's founding meeting was taking place, no "scandal" such as the horrendous torture of Iraqis by soldiers of the United States at the Abu Ghraib prison had yet erupted. Except through journalists selected by and "embedded" within the forces of the military coalition, the world public could receive scant information about the war through mainstream media.[4] At the time, the situation was still one in which, as one

participant at the founding meeting anticipated, "most people will be surprised that we have a tribunal on Iraq."[5]

Over the next three days, these antiwar activists gathered in Istanbul would laugh and argue, get angry and fatigued together. They would break bread and exchange stories, shout at and listen to each other. The majority of those present at the World Tribunal on Iraq's founding meeting were individuals in their forties and fifties, with diverse ties to their local antiwar movements. I was one of the youngest participants at this gathering as a delegate of the New York City–based group, Peace Initiative Turkey (PIT). A network of antiwar activists and Leftist academics from Turkey residing in the United States, PIT would eventually become active in producing the tribunal's May 2004 session in New York City. To the surprise of other participants at the founding meeting, I was also there as an anthropologist who wanted to chronicle the transnational constitution of the tribunal. For this purpose, I recorded the proceedings of the meeting, the transcripts of which were deemed useful and later shared with the global network of tribunal activists.

In this chapter, I provide a detailed account of the encounter in Istanbul through which the World Tribunal on Iraq (WTI) was founded. I examine the moment of self-authorization of a "world tribunal" to raise questions about the political constitution of global civil society—a multitude—in action. What could the grounds of the tribunal's authority be, the sources of its legitimacy? Along with common political imaginaries the tribunal's founders shared, I reflect on disagreements among this assembly that met in Istanbul, aiming to analyze perplexities of the WTI's constituting act. Like all practices of politico-legal constitution, the World Tribunal on Iraq's founding act raises questions about authority and autonomy, rights and responsibilities, representation and imputation, inclusion and exclusion. Given the scope of its constitutional ambitions, moreover, the WTI's founding poses these questions on a global terrain and in relation to a global constituency—what some cosmopolitan theorists name "global civil society," and others, "humanity." On this terrain, disputes informing the constitution of the WTI were at once philosophical, legal, and decisively political.

What I depict in this chapter are lived tensions between *legalist* and *political* imaginaries that animate rival visions of global peace and justice. Who were these individuals gathered in Istanbul to constitute a world tribunal? On what grounds could they authorize themselves to perform such an act? How would they relate to international law and claim to render justice? Disagreements among WTI organizers on these questions revealed a range of attitudes

toward international law and politics. These attitudes however—and the judgments and passions that animated them—were far from unique. They reflected a range of ideological tendencies shared by many others who participated in the multifarious antiwar movements emerging in response to the occupation of Iraq. In effect, the disagreements I examine exemplify different notions of global justice, legitimacy, and solidarity imagined by those who opposed Iraq's occupation in and after 2003.

The meeting to found the WTI, lasting three full days as participants worked well into the night on draft proposals and translations, was hosted by three different antiwar coalitions in Istanbul.[6] Thanks to the rooted strength of the antiwar movement in Turkey, it could take place in Taksim, the heart of Istanbul, at the headquarters of the Union of Mechanical Engineers of Turkey. Participants who had traveled from other cities were accommodated in the guesthouse of the Union of Petrol Workers, and the municipality of Şişli provided a bus for their transportation. In this way, the solidarity economy that functioned with little cash, yet managed to finance the WTI's culminating session in Istanbul in 2005, was prefigured in the practical arrangements of the tribunal's founding act. My own plane ticket to attend the meeting in Istanbul was purchased through funds pooled by PIT activists in New York City, where I was a doctoral student at Columbia University.[7]

It was in the final hour of this Istanbul meeting that, after rigorous debate and passionate disagreement, the World Tribunal on Iraq was named and founded. The WTI was a complex affair, by which I mean two things. First, its translingual, transgenerational, transcontinental, transformative story is difficult to narrate. More importantly, the complexity pertains to the intricate political and intellectual vision encapsulated in the praxis of the WTI, which crystalized at the founding meeting where differences among tribunal activists were initially staged and negotiated. To probe the depth of this complexity, I begin with the following detail: Although a summary of the foundational debates was promised to the tribunal activists who could not attend the meeting in person, the hosts of the event deemed it impossible to compose a synopsis of the deliberations. Discussions were too intricate and contentious, while a consensus, to the extent that it emerged, was too difficult to convey. As a result, a volunteer team of four transcribers was formed in Istanbul to render the conversations verbatim from the sound recordings I had created. This too was not easy, for accents and linguistic particularities, along with problems of translation and transliteration from native languages, made it difficult for the university students who had volunteered for the transcription,

and even for the meeting participants themselves, to understand precisely what had been said and meant.

Speaking the Same Language

"Starting out in different places of the world with ideas about holding a tribunal, we met each other." With this sentence, an organizer from Istanbul inaugurated the constituting meeting of the World Tribunal on Iraq. By the end of the second day, however, following fifteen hours of deliberation and the emergence of conflicting positions on the table, the same organizer would find it necessary to insist that "we came together—maybe you could call it by chance, but it was not by chance." Such were the disagreements within this multitude about what a "world tribunal" could and should look like.

Without a doubt, however, the setting of this encounter was the global antiwar movement, which relied initially, and significantly, on the transnational networks of the alter-globalization mobilizations that had become most visible in the late 1990s.[8] The Bangkok-based Focus on the Global South—an important research and advocacy institute associated with the alter-globalization movement, for example—facilitated transnational networking to realize the tribunal idea. It connected diverse groups and individuals active in the alter-globalization and antiwar movements to work together toward this goal.[9] A key organization behind the Social Movements Assembly, and later the Anti-War Assembly, both held in conjunction with the World Social Forum, Focus on the Global South was especially pivotal in raising the WTI's profile at both regional and global social forums in 2003, 2004, and 2005.[10] Among those who carried out the practical work for various WTI sessions—selecting witnesses, advocates, and members of the jury; taking care of travel and accommodation arrangements; creating pamphlets and posters; building support for the WTI through grassroots work; organizing meetings and dealing with the media; renting conference halls; doing fundraising; working on translations; reporting for "alternative media" worldwide[11]—many were also associated with the alter-globalization movement, now channeling their energies toward antiwar work in the political landscape of the Global War on Terror.[12]

Before the WTI's founding encounter in October 2003, a number of congregations of the global antiwar movement took place where the idea of an "international tribunal on Iraq" was discussed and disseminated. In addition

to the May 2003 gathering in Jakarta, which resulted in the "Jakarta Consensus," various other antiwar meetings held in Berlin, Geneva, and Cancun served as venues for the meeting and networking of those interested in constituting such a tribunal. Most notably, when the idea of holding a tribunal on the occupation of Iraq simultaneously occurred to people in different places around the world, preliminary research promptly led to the Russell Tribunal of 1967, a historical inspiration for the WTI, and to the Bertrand Russell Peace Foundation based in the United Kingdom.

An organization active within the European peace movement, the Russell Foundation was pivotal in linking groups and individuals interested in organizing one or another conception of a tribunal about the war on Iraq. In particular, those attracted to the idea met at the convention of the European Network for Peace and Human Rights, which was sponsored by the Russell Foundation in Brussels. At this gathering attended by two hundred people on June 2003 at the European Union Parliament, an additional meeting was initiated to discuss the idea of an international tribunal on Iraq. Called by activists from Turkey who had already prepared a written proposal for initiating an independent tribunal, forty interested individuals from Europe, Asia, and North America attended this particular meeting where they debated and endorsed a basic conceptual framework for the tribunal.

At the June 2003 meeting in Brussels, participants decided that the tribunal would consist of many sessions around the world, which would culminate with a larger event in Istanbul, and that the working group from Turkey would be the global facilitator and clearinghouse of the project.[13] In hindsight, it is not obvious why the various tribunal initiatives around the world sought to articulate and build a *global* project, if one does not take into account the burning desire for acting as a global movement.[14] That the tribunal on Iraq would be a global initiative was asserted from the beginning. However, what the nature of this globality would be was a contested question.[15] If the WTI as a transnational project was to be larger than the sum of its local sessions occurring around the world, the question of how to constitute the grammar of the global effort was among the greatest challenges faced during the founding meeting and the overall process.

A fundamental aim of the meeting in Istanbul, as an organizer from the working group in Turkey asserted when inaugurating the event, was: "to clarify things, decide how to move on, and develop a more similar way of speaking about what we are doing. Not to make it identical, but to specify the common ground we have." And the specification of this common ground, or

rather, the "production of the common,"[16] was to take place not only through language, but *as* language. True, in order to solidify the common ground on which the WTI would perform globally, what came to be named a Platform Text was collectively produced during the tribunal's founding act. But more important perhaps than this textual result, the founding meeting and the transnational WTI processes that followed were a continuous attempt to construct the very language in which a nongovernmental tribunal could and should be practiced.

With the term "language," moreover, I do not merely intend to highlight the contested lexicon of the tribunal's idiom, such as its "Panel of Advocates" or "Jury of Conscience" in contradistinction to "prosecutors" and "judges." Nor is it simply the question of a language community in which, and for whom, the WTI would speak and hope its utterances to be recognized by—such as international lawyers or antiwar activists. In suggesting that the production of the common was to take place not only through language, but *as* language, I also wish to register a situation in which the *form of organization* of the World Tribunal on Iraq's transnational network was, just as language, very much without an authorizing, decision-making center.[17]

It was the idea of a "tribunal"—this concept's inherent ability to conjoin various legal and political associations, its capaciousness—that facilitated the collaboration of a diverse group of individuals and organizations acting within the global antiwar movement whose chances of encounter and capacities of cooperation might otherwise have been limited. In that idea were rudiments of a grammar, indeed, a language in which a multitude could partake. First, the *form* of a tribunal—an official or unofficial one—was easily, if not too readily, associated with ideas of reclaiming justice.[18] Second, the *concept* of a tribunal appealed to a constituency. It was particularly attractive to international lawyers. Third, the *memory* of the Russell Tribunal appealed to intellectuals, as well as to a particular generation who could remember its performance in 1967, and endowed the current endeavor with a historical legitimacy.[19] Fourth, the *staging* of a tribunal attracted many. Its theatricality and performativity could be produced and reproduced on a collectively constructed world stage.

As Hannah Arendt once observed, while performing arts have a strong affinity with politics—"both need a publicly organized space for their 'work,' and both depend on others for the performance itself"—the existence of such a space of appearances cannot to be taken for granted, especially globally, I must add.[20] After the historic, worldwide demonstrations on February 15,

2003, against the war on Iraq, and with the beginning of the invasion the next month, the problems of public visibility and audibility that antiwar movements had been experiencing were only magnified and amplified. At this particular conjuncture, the hope was that the form of a tribunal could provide for the antiwar movements of the world, to borrow again from Arendt, "a space of appearances where they could act, with a kind of theater" where their visions and dissent could appear.[21] A worldwide tribunal had the potential of producing a globally networked public space on stage,[22] where antiwar movements could gain visibility and audibility; where they could manifest themselves tangibly, as Arendt put it, "in words that can be heard, in deeds that can be seen, and in events which are talked about, remembered and turned into stories before they are finally incorporated into the great storybook of human history."[23] But how was this potential to be realized and who could realize it legitimately? This chapter tells a part of this story.

"The Law Can Include": A Legalist Perspective

The constitutive tension at the founding meeting of the WTI was the one between—for lack of a better characterization—a "legalist" perspective and a "political" one. In a manner that is not too surprising, it was chiefly lawyers, although not all, who advocated the "legalist" perspective that I will outline in this section. Similarly, nonlawyers did not exclusively expound what may be called a "political," popular justice perspective. While the two perspectives cut across participants' professional relations to the law, ultimately, they provided a focus on ideas about international law and what a global civil society tribunal could or could not do. Note, however, that it would be difficult to speak about a consistent content—"political" or "legalist"—formulated entirely independent of one another. Rather, what emerged were tendencies that articulated themselves relationally during the collective attempt to conceptualize the WTI and to constitute its language, structure, and fields of action.

Throughout the WTI's founding meeting, international lawyers undoubtedly deployed a power/knowledge privilege of expertise in articulating the legalist perspective with, and over, the political one. Lawyers (and others educated in the universe of international law) often corrected the grammar of the nonlawyer who wished to express "politics" in the tongue of law. On the other hand, something qualitatively different was at stake in the legalist position than a desire to proofread clumsy translations of antiwar politics into the

language of international law. In the most extreme case, the legalist wished international law to be the sole mother tongue of the nascent World Tribunal on Iraq, whereby the tribunal would not only express, but also perceive "facts" through categories of international law—hence recognizing, and thus organizing, reality through the discourse of law.

According to the legalist perspective, what was perceived as the self-evident legitimacy of international law would and could be appropriated by the WTI through the adoption of its procedures. If the WTI wished to be legitimate, legalists argued, it had to "base itself in the fabric of international law," while the securing of legitimacy was to be delegated to the expertise of international lawyers as its competent technicians. A document circulated at the founding meeting, "Opinions and Requests from Hiroshima Concerning the Tribunal on Iraq," stipulated, for instance, that "what is important here is to avoid being a mere political campaign, but instead, to secure [the tribunal's] legitimacy to the utmost. For that sake, it is necessary that the court should consist of experts of international law." While inextricably linking the attainment of legitimacy with the participation of legal experts in the tribunal, such statements implied an intrinsic opposition between the pursuit of "legitimacy" as such and the conduct of a "mere political campaign."

A meeting participant from Hiroshima asserted, still unequivocally, what I have named the legalist perspective:

> What we are doing here is a tribunal, and we are using courts, we are not just doing a political campaign. In order for the tribunal to be politically influential and [have] more political impact, we have to stick to international law and legal procedure. We have to pursue something that even the more conservative lawyers or ideologues cannot refute. You [another participant] say that what is important is content, but as far as we use the term[s] tribunal, court, we have to respect international law and we have to pursue something credible. Then that has more political impact. So if the conservative ideologue will mock the flawed procedure, then it is just a mock tribunal and we cannot have impact.

One of the premises of this statement is that a tribunal implies a particular regime of credibility. This regime of credibility involves both the mobilization of international law's "content"—such as certain treaties whose violation through the war on Iraq could be demonstrated—and the proper "procedure"

of the demonstration. Since, in this view, legal content and procedure could not possibly be separated, the conclusion the founding meeting had to reach was clear: the tribunal's use of legal content required the use of legal procedure.[24]

What is also remarkable in this perspective is a certain presumption of the claim of international law—in terms of form, substance, and procedure—to universal acceptability. Thus, the legalist position was predicated on the very possibility that the WTI's findings, if the correct procedural regime was followed, could be something "even the most conservative lawyers or ideologues cannot refute." As a paradoxical result, only if the WTI could appropriate the universal credibility of the law *beyond* political divisions would the decidedly political impact of its legal demonstration then follow. Through such a strategy, an enormous power was granted to the imagined critic of the tribunal—the conservative lawyer or ideologue—by the "progressive" antiwar organizer who had to achieve credibility in the eyes of this imagined critic through what was thought as the *neutral* medium of international law. Accordingly, from the legalist perspective, what would make the WTI a "mock tribunal" was not, as many others thought, a replication, imitation, or mimicking of legal procedures and the specific roles and language they would assign, but instead the charge that the WTI did not follow them closely enough.

In his 1972 interview with Maoist militants, it was precisely such legalist perspectives that Michel Foucault attempted to refute when he reflected on acts of "popular justice" in contrast to "bourgeois courts."[25] Examining the spatial arrangement of these courts, Foucault observed that at the very least, it implied a particular ideology inimical to popular justice: "Now this idea that there can be people who are neutral in relation to the two parties, that they can make judgments about them on the basis of ideas of justice which have absolute validity, and that their decisions must be acted upon, I believe that all this is far removed from and quite foreign to the very idea of popular justice. In the case of popular justice, you do not have three elements, you have the masses and their enemies."[26] For seeking to introduce this neutral "third element" between the masses and their enemies, Foucault relentlessly objected to the phenomenon of "people's courts" advocated by Maoist militants as a problematic distortion of popular justice.

To make his case against the practice of people's courts (recalling the epigraph to my introduction), Foucault appealed to the materialist credentials of Maoist militants and asserted the idealist character of the court form, of which, to his mind, they needed to be critical: "Is not the setting up of a

neutral institution standing between the people and its enemies, capable of establishing the dividing line between the true and the false, the guilty and the innocent, the just and the unjust, is this not a way of resisting popular justice? A way of disarming it in the struggle it is conducting in reality in favor of an arbitration in the realm of the ideal? This is why I am wondering whether the court is not a form of popular justice but rather its deformation." Here, the main objection Foucault raises against the employment of the court form is that it would reinscribe enactments of popular justice "within institutions which are typical of a state apparatus" that would ensnare, control, and strangle these enactments.[27] As Foucault elaborated further, when the masses seek to enact popular justice, they do not rely on "an abstract, universal idea of justice" as state institutions do, but instead rely "*only on their own experience* of the injuries they have suffered, that of the way in which they have been wronged, in which they have been oppressed."[28]

If Foucault is correct, if enactments of popular justice cannot, by definition, rely on an abstract, universal idea of justice, could enactments of popular justice (with or without the court form) address matters of *global* justice, where injuries and wrongs are inflicted not necessarily on the self, but on others, say in Iraq or Syria? Foucault's 1972 interview with Maoist militants gives us few clues in response to this question, as the parameters of this discussion is drawn by the nation-state. Moreover, Foucault's apparent enthusiasm in the final years of his life for human rights that *do* mobilize universal ideas of justice makes it all the more difficult to infer what his response would have been to this question. While social theorist Thomas Osborne and legal theorist Ben Golder are correct in suggesting that the international activities of organizations such as Amnesty International provided Foucault with an opportunity to reconsider possibilities for a new understanding of "right" beyond national borders, Foucault's own formulation of the "foundation" of such a right remains ambiguous.[29]

Consider the principles that Foucault articulated in a brief statement titled "Confronting Governments: Human Rights," penned in 1981 and published in 1984, some ten years after his discussion on popular justice with Maoist militants. First among these principles, Foucault wrote, is that "there exists an international citizenship that has its rights and duties, and that obliges one to speak out against every abuse of power, whoever its author, whoever its victims. After all, we are all members of the community of the governed, and thereby obliged to show mutual solidarity."[30] There is a constitutive ambiguity at the heart of this formulation. It is not immediately clear whether the

international citizenship of which Foucault speaks—and the rights, obligations, and the basis of solidarity implied therein—exist prior to "the community of the governed," or whether it is common existence within "the community of the governed" that gives birth to international citizenship.[31] In my interpretation, Foucault presents membership in the community of the governed as a factual condition that "grounds" international citizenship and its rights and obligations to speak out against every abuse of power.[32] While his focus on "abuses of power" leaves room for the exercise of power by those who govern in ways that are not abuses, the *duty* to speak out against abuses of power, "whoever its author, whoever its victim," is not merely a matter of political decision: that prerogative of international citizenship presents itself as much as an "absolute right" (Foucault's term), as an ethical obligation.

Is this prescription for the performance of global justice compatible with Foucault's earlier conceptualization of popular justice? A possible interpretation is that with the concept of "international citizenry," Foucault transposes "the masses" onto the global terrain as those who would oppose their enemies, understood as the abusers power. Note, however, that in contrast to the collectivist nature of popular justice exercised by the masses, Foucault designates the "new right" that initiatives such as Amnesty International have created as a right of "private *individuals* to effectively intervene in the sphere of international policy and strategy."[33] And if this is the case, could the bearers of international citizenship confront their enemies without mobilizing a neutral third element, without "an abstract, universal idea of justice," which Foucault objected to in enactments of popular justice?

"No" was the definite answer of two participants from London—passionate supporters of the International Criminal Court (ICC)—at the WTI's founding meeting, as they articulated aspects of what I have named the legalist perspective. Theirs was a response to a particular discussion item placed on the "living agenda" of the meeting. The question was, in the words of the moderator, "whether our tribunal should be taking international law seriously, taking values seriously, or both. Or whether we should not be addressing international law at all, but should be talking about the values. It seemed that we had different views." Given the suspicions voiced around the table about international law and its complicity in the 2003 occupation of Iraq, one of the participants from London found it necessary to insist:

> One general thing that we need to remind ourselves is that we can have law without justice, which is what people complain about, but we will

> not have justice without law. That I think we must bear in mind all the time. Two points I would like to say about international law, where there is the defect [which] particularly concerns us. First, the Americans and the British claim that the passing of the UN resolution 1441 gave them the right to take action in Iraq. And they also, if you recall, from 1992 till 2002, continued sanctions and continued bombing Iraq, which they said was legal. . . . Now in both those cases, since we do not have an automatic procedure for referring contested questions of international law to a court, there is a defect in the system. It's not a defect necessarily of international law, but it is the defect in the system of administration of that law.

In this legalist interpretation of global justice, it was the establishment of a neutral third element, an independent court of law with universal jurisdiction that could adjudicate competing claims in global politics and fix the "defect" that was of particular concern to participants at the WTI's founding meeting.

Echoing the sentiments of his colleague, another participant from London asserted, "international law is now a thing which the British government at least, and all other governments will say they uphold, even the American. So how do you decide what is international law? You don't do it by going to the lawyer that you have paid to give an opinion. This is what the British Government does. You go to a court because that is where both sides can put their case and you hope you will get a just hearing and an answer which is true." But what if a court were to determine that the war on Iraq was legal? To the extent that participants at the WTI's founding meeting were against the occupation of Iraq *in principle*, a "defect" would nevertheless remain in place even—or especially—if an international court were to determine that the US-led occupation of Iraq was not illegal.

Still, arguments issued from the legalist perspective were also substitutive. Where the International Criminal Court did not act (as of yet, it was hoped) the WTI had to act—procedurally as the ICC would have—to motivate the prosecutor of the ICC to take up the case against Tony Blair.[34] Similarly, in the opinion of a lawyer from Jerusalem, the WTI had to "bear in comparison" with tribunals for Rwanda and Yugoslavia: although it would be formulating judgments without pronouncing legally enforceable sentences, this lawyer argued, the WTI had to follow specific procedures of international law in order to be legitimate.

Underlying the legalist perspective was the implicit judgment that, despite the failure of institutions of international law to hold the United States, the United Kingdom, and other coalition forces accountable for their deeds in Iraq (hence the very emergence of the WTI), international law was first of all the legitimate means, but also the *legitimate end* of a politics striving for global peace and justice. In practice, the legalist perspective required galvanizing support for the establishment of institutions of "global governance," most notably the International Criminal Court. In the world of academia, as I discuss at some length in Chapter 4, this view finds translation in the scholarship of many jurists and theorists who argue for the establishment of "law's empire" and legal cosmopolitanism.[35] It was with such a remarkable valorization of international law that a participant from London could insist that in the WTI processes, "whatever is to be done has to be done in a form which makes it clear that international law is our main concern." From the legalist point of view, the WTI had to fulfill, in the words of another participant, "an obligation to step in and take up the defense of international law." Similar assertions from the legalist perspective created a case in which it was as if what had been attacked (and therefore had to be defended) were not the corporeal people of Iraq, but "international law" as such.

However, neither international law nor its defense was the main concern of all participants at the WTI's founding meeting or in the years to come. Nonetheless, requirements of the legalist perspective went beyond the premise that international law had to be defended as the legitimate means and the legitimate end of global politics—as what the "human race has created after so many years' efforts."[36] The legalist perspective also demanded that the very argumentation of the WTI be structured by international law. Clearly, for the legalist, the statute of the International Criminal Court represented the utmost stage in the progressive evolution of international law, if not of "humanity" as such.

This view had specific implications for the praxis of the WTI. While a participant from Tokyo argued, "in order to be legitimate, this tribunal should employ the ICC Statute," another participant from London celebrated the conceptual innovations of the ICC that the WTI had to draw on. Giving the concept of "intentionality" as an example, he insisted that the WTI could now have "the possibility of a well-structured argument because of the much clearer definition [of intentionality] we are given than previously available in international law." Displaying well the internal logic of the legalist perspective, the premise of such assertions was that the WTI's argumentation could not be

just any form of argumentation, but had to be based on *legal reasoning*, identifying "intention" and therefore "culpability" in specific ways, at the expense of alternatives. Thus, the legalist perspective not only imagined the language of the WTI as the language of international law, but also wished to draw "political perspectives" into the domain of its legal reasoning.

A particularly revealing, symptomatic exchange took place on the last day of the founding meeting, during the frustrating process of drafting the WTI's Platform Text. A participant representing the No to War Coordination—one of the three antiwar coalitions that supported the tribunal in Turkey—who had had to leave the meeting earlier, noted upon his return the absence in the draft Platform Text of a point of consensus already established on the first day of the meeting. In the draft he was now questioning, a list was composed of the WTI's various "sources of legitimacy." This list was a rendering of the first day's discussion about a fundamental question placed on the meeting's "living agenda": from where do we, as a tribunal, get our legitimacy? Interestingly, the legalist perspective did not have much to contribute on this question—except that the tribunal was going to "uphold and defend international law," which was seen as a legitimating endeavor in itself. Thus, because of the legalist perspective's valorization of international law as such and its expertly participation in the working group charged with drafting the Platform Text, one "source of legitimacy" for the WTI was eventually listed as "bringing the principles of international law to the forefront."

Given what he considered an oversight, the representative of the No to War Coordination now wished to confirm with the rest of the group that another source of legitimacy should have been listed in the draft Platform Text. "We had mentioned that the fact that the Iraqi people are resisting [the occupation] is one of our sources of legitimacy. Would anyone disagree?" The common roar in response was a "No"—no one would disagree. Yet, between what I will call the "political perspective" on the one side, and on the other, the "legalist perspective" of a lawyer who was involved in drafting the Platform Text, the following exchange took place:

> —*Political Perspective*: On the issue of legitimacy. We had mentioned that the fact that the Iraqi people are resisting is one of our sources of legitimacy. Would anyone disagree?
> —(*Collective Roar*): No.
> —*Legalist Perspective*: Self-determination is a legal term that could be included by the last [point on the sources of legitimacy list]—"bringing

> the principles of international law to the forefront," which would include the long established principle of self-determination. We don't have to add anything. It is here. The last point.
> —*Political Perspective*: They are not the same thing. It is not the same point. I am talking about the active resistance of the Iraqi people. Not about the legal principle. The legal principle would still be there if the Iraqi people were not resisting. Am I clear?
> —*Legalist Perspective*: I do not get your point. What to add?

This exchange manifests particularly well the manner in which the legalist perspective performed throughout the founding meeting. It insisted—in the words of a lawyer from New York—that "the law can include": whatever needed to be expressed by the WTI could be expressed exclusively through the language, principles, and reasoning of international law.

In this exchange, what was significant according to the political perspective was the corporeal, historically situated "action on the field, demonstrations etc., including the guerilla movement" of Iraqis who resisted the occupation. This resistance, whose existence in praxis could not be taken for granted, was asserted by this participant and others as an important "source" of the WTI's own legitimacy to question the justness of the war and occupation. From the legalist perspective, however, the fact of Iraqi resistance to the occupation was not worth mentioning by name. The WTI's legitimacy was vested in its endorsement of the "principles of international law," and one such principle, that of self-determination, would *suffice* to instantiate what the political perspective wished to express by highlighting the armed and unarmed actions of Iraqis resisting the occupation.

From the legalist perspective, in other words, the empirical fact of anti-occupation resistance could only serve as "evidence" that might verify an indictment whose terms were already given by the principles of international law. International law could always already subsume the fact of anti-occupation resistance under a set of independent, abstract principles. Thus, for the legalist, as if by dialectical cunning, the practical negation of colonial occupation in Iraq would turn into a mere occasion for the affirmation of the principles of international law. Effectively, in favor of what Foucault called "an arbitration in the realm of the ideal,"[37] the legalist perspective would erase the anti-occupation resistance in Iraq, this struggle conducted in reality, from the founding text and the legitimating imagination of the WTI by subsuming it under abstract principles of international law.

"We Do [not] Represent Something": A Political Perspective

According to the legalist perspective, then, what was perceived to be the self-evident legitimacy of international law had to be appropriated by the WTI through the adoption of its language, principles, and procedures. In opening the meeting, however, a host from the tribunal committee in Istanbul had introduced a contrasting vision—what I will discuss in this section as the "political perspective"—shared by many others around the table: "To do this with credibility and legitimacy, we do not need to replicate existing official forms and mechanisms. This is not a theatrical display of how the officially set up courts and tribunals should have acted and decided and operated if they had upheld international law like they are supposed to. This would belittle our endeavor and undermine it. . . . We should keep in mind that many bodies that in procedure and form claim to stick to international law, are in effect condoning its violation." Instead of adopting the posture of an official tribunal, she added, "we should remain what we are, an initiative of global civil society." If so, what could constitute the legitimacy of such an initiative? As I detail below, the political perspective articulated two different bases of legitimacy for the World Tribunal on Iraq: being a multitude of individuals who were "world citizens," and being a part of the global antiwar movement.

From both the legalist and political perspectives, participants at the founding meeting had reasoned that because official institutions of international law had failed in the case of Iraq's occupation to deliver "the promise of justice,"[38] an initiative of global civil society such as the WTI could legitimately assume the task of international institutions. In this formulation, however, there remained a tension between the expectation of neutrality attached to the concepts of a "tribunal" and "civil society"[39] on the one side, and the fact that, in the words of a participant from Stockholm, "we know beforehand what we are coming up with. Everyone can see that from any document coming from us." To resolve this tension, a participant from Genoa argued, in opposition to the legalist perspective, that since "we are in agreement on the condemnation of the aggression and the occupation, and this is a common ground which is a conclusion in itself, it has to be articulated and shown to people." In other words, rather than acting *as if* it were a neutral body, as official institutions of international law would have, the WTI had to embrace openly its partisan foundation.

It was this consciousness that resulted in the consequent formulation of

what I call a *partisan legitimacy* specific to the WTI, as distinct from the professed neutrality of official institutions of law. Recalling the epigraph to my introduction, in June 2005, Arundhati Roy offered the clearest formulation of the WTI's partisan legitimacy in her opening speech as the spokesperson of the Jury of Conscience at the WTI's culminating session in Istanbul: "Before the testimonies begin, I would like to briefly address as straightforwardly as I can a few questions that have been raised about this tribunal. The first is that this tribunal is a kangaroo court. That it represents only one point of view. That it is a prosecution without a defense. That the verdict is a foregone conclusion. . . . Let me say categorically that this tribunal is the defense. It is an act of resistance in itself."[40] As Roy amplified, the WTI was an attempt "to document the history of the war not from the point of view of the victors but of the temporarily—and I repeat the word temporarily—vanquished." Demarcating its amity lines, and positioning itself as an act within the global *anti*-war movement, the WTI would eventually decide against the pretense to neutral arbitration in the realm of the ideal typically instituted by the court form, as Foucault observed in his discussion with Maoist militants.

Already at the WTI's founding meeting, echoing the sentiments of many, a participant from Istanbul had addressed the critical question: "Where do we get our legitimacy from? I think the answer is clear, in my mind at least. It is not the international community of jurists, it is not those sitting at the United Nations that are our constituency. If we have any legitimacy, we have it from the gigantic international antiwar movement." Like Arundhati Roy's statement, this was a political positioning par excellence, siding with a specifically *anti*-war constituency and consciously canceling the "neutral third element" Foucault objected to in matters of popular justice.

A significant implication of this position, this participant further argued, was that the WTI should "not only do things on a plain, legal level." As another added, "obeying all the international laws does not grant this tribunal to be a tribunal of the people," which would require mobilizing within social movements such that, as she insisted: "this tribunal become[s] a campaign, become[s] an issue that is much wider. And I insist that the legal issues can come only after we have made collectively this choice previously." Advocating what she termed a "movement position against the war" in explicit disagreement with the legalist perspective, this participant from Genoa asserted:

> If this is a tribunal as it could be, it has to speak multiple languages. So the format will be answered by the fact that we will have to talk about

> it in political or poetical and artistic terms and that the message will have to be delivered in different directions, different dimensions. . . . The idea that brought me here [is] that this issue of the tribunal could become an important event within the movement—but not because it would take care of the laws. If it is only the question of using international laws, and exposing the fact that they are not respected—so it's OK, let the lawyers do it. If we want it to be something that has more implication, as it could also be an example of victims in a way rising to ask the defendant, then we have to formulate our discussion around, I call it "a pact of action."

According to this political perspective—which recognized the need to act in multiple languages and multiple grammars, including the poetic and the artistic—the WTI's legitimacy would be subsequent to its founding event and was to be earned through action. The tribunal had to actively weave multiple threads of the global antiwar movement into a constitutive project, instead of simply declaring the "fabric of international law" as the foundation of its efforts. In a passionate intervention along the same lines, a participant from Tunis argued further, "When we think of this terrible aggression and invasion of Iraq, all of us quickly say that it was illegal, yes. But while the legal system can be a point of reference, the war was not illegal only, it was unjust, it was immoral . . . if we make [the legal system] our only point of reference, soon we will find ourselves in a situation where we cannot enforce what we are going to find." Reflecting on the specificity of the historical moment, she proceeded to argue that the WTI had to challenge the very concept of sovereignty in imagining its own legitimacy: "The International Criminal Court, the world court, is between nation-states. And therefore challenging at a very deep level the concept of sovereignty, we want to say that the people are sovereign. Laws define us, laws confine us. We confine ourselves. I think it is time, this time, for the first time in history we went all over the world [on February 15, 2003] in little groups, large groups, in millions, saying no to war before the war had started. We must see that this is a very precious moment and go beyond this, look at horizons that our minds as yet may not grasp. But these horizons exist and we must reach for them." Viewing these horizons at its founding meeting, if the WTI wished to translate the negative delegitimation of the war on Iraq—as was manifest in the global antiwar protests of February 2003—into the positive project of a global constituent power, it was nevertheless difficult to determine the appropriate protocol of translation. As serious as another participant was in remarking that "there is

no model for it. We are creating actually a model. So we are in the open—it is trial and error," his observation would occasion friendly jokes and laughter about admitting "trial and error" in the process of putting the United States and its allies on "trial."

While attempting to articulate a basis of legitimacy for the WTI and to establish the grounds on which it could act and speak, a related problem to be addressed was the subject constituting the tribunal. Who was it? A participant from the Istanbul committee explained her position: "People need to know who we are. Because you know, I am just a world citizen, who am I? What's behind me? . . . I am doing this because I am working with my co-citizens, you. And this is the way I perceive this. So I am trying to reach other citizens, this is my understanding of citizenship. I have a lot of co-patriots all over the world and when I talk with them, they know what I am talking about—just as you have your co-citizens. So don't expect me to talk [only] to the Turks." Instead of a collection of national efforts that would locate each tribunal organizer in a "local" position, language, and conversation, this participant asserted the imaginary of an endeavor that directly addressed a political community of "world citizens." From within the "imagined community"[41] of world citizenship, she further elaborated, "I may feel I am acting only as a person, representing nobody but myself, I feel personally attacked [by the war on Iraq]. I am afraid that my children will die in the future, there will be no world within a hundred years—that may be my reason for contributing to this tribunal, and you may be contributing because you think this superpower [the United States] should be stopped and only because of that."

Another participant from Istanbul echoed this "individualist stance," as it was named at the meeting: "personally, I find my legitimacy in myself to start with." The parallel assertion by many participants of "the duty of conscience" of any and all persons as a source of legitimacy for constituting a global civil society tribunal could also be interpreted along these individualist lines. Such assertions mobilized the premise that, in the words of another, "we are entitled as any human being part of a world society to protest and take it on ourselves to say to others, this is what should be done." Here, analogous to Foucault's formulation of international citizenship, what assumed primacy as the grounds of the right to "speak out against every abuse of power, whoever its author, whoever its victims" was partaking in what was imagined as a world society or, "the community of the governed" in Foucault's formulation.[42]

Deserving attention here is the complementarity between any individual's "obligation," as an official or otherwise, to be held accountable to the world

citizenry and any individual's "right" to judge and to ask another to give account in the political field of world citizenship.[43] Theorists of global democracy Michael Hardt and Antonio Negri assert that "with respect to such terms as *responsibility*, for example, *accountability* drains the democratic character of representation and makes it a technical operation, posing it in the realm of accounting and bookkeeping."[44] This observation was especially acute in the case of the legalist perspective, where the idea of accountability carried the weight of a technical operation—in insisting, for example, that the Rome Statute of the International Criminal Court, outlining particular legal grounds and procedures for establishing individual culpability, must be adopted by the WTI as its charter. From the political perspective, however, the idea of accountability—or more precisely yet, the *act* of holding to account—served, in the first instance, to establish an unmediated, direct relationship between the judging and the judged.

To demonstrate, the banner of the B*Russell*s Tribunal[45] used in local antiwar demonstrations read (in English): "President Bush: The World Holds You Accountable!" In Turkish, a language that has no precise equivalent for the term "accountability," the WTI-Istanbul posters carried the injunction *Hesap Ver Bush! Hesap Ver Blair!*: "Give account Bush! Give account Blair!" Whereas both announced the identity of the one held to account, it is noteworthy that only the Brussels banner revealed the identity of the subject holding another to account, revealed as "the world." In Istanbul, the poster leaves this subject unspecified, as it *speaks* the injunction to give account.[46] In either case, creating what Judith Butler calls "a structure of address"[47] where none had hitherto existed, the WTI could constitute itself publicly precisely on account of asking "the other" to give an account of itself.

If the WTI's legitimacy to judge in the form of a tribunal was contentiously derived by a number of participants from the sovereign right of *individuals* in relation to the global political field, there was also passionate disagreement about the constitution of the subject to be judged. Once again, what was celebrated as an "advance" from the legalist perspective—namely that, after Nuremberg, the International Criminal Court Statue had institutionalized the concept of individual criminal responsibility—this "progress" occasioned for others serious concerns. A participant from Tunis objected to "the pursuit of war criminals that is individualized, and deconceptualized, and depoliticized," noting "this is what is happening in Yugoslavia and Rwanda. So you take out the war criminal, you take out Milosevic and you don't talk about all the structures and institutions that have created this monster."

In fact, many WTI organizers wished to interrogate and judge not (only) individuals, but "political structures" and the formation of a "new imperial world order" by addressing, for example, the neoconservative Project for the New American Century.[48] When registering their objection to a uniform, legalist charter for all WTI sessions (which I discuss in Chapter 2), organizers from Brussels stressed, for example, that they "did not really follow this legal thing that you can only prosecute individuals" and that they felt "uncomfortable to say that Bush is our target." Instead, they sought to demonstrate the connection between individuals, doctrines, and state practices. This, one of these organizers insisted, went "far beyond legal discussions" and implied "far beyond illegality, an incredible consistency in the plans of global domination." One could not "have the whole scope of the problem by only sticking to international laws because you have to ask why we are in this situation"—which was, according to the organizers from Brussels, "the *political* question."

Thus, when a lawyer from New York insisted that the Project for the New American Century could be addressed through international law under the concept of "engagement in conspiracy"—which, she argued, would help the "jury to frame the questions and their answers"—an organizer from Brussels objected passionately: "But maybe some people say, 'I don't want that frame,' [where] they would have to reduce or translate or minimize their language just at the point that you can call it a conspiracy." Objecting to this suggested legal translation, with some humor he imagined, "if you say conspiracy . . . you would stick [out] your own eyes because any opponent would say, 'Brussels Tribunal—new conspiracy theory on America!' Finished. Gone. Bye, bye." This comment was enabled by the implicit recognition that the two languages of law and politics are incommensurable.

Others from Istanbul, despite the assertion of another lawyer that "we have to establish individual criminal responsibility—that is what a tribunal does," were also lukewarm to this idea, for fears of "narrowing" the political examination they hoped would be developed through the tribunal if the focus were merely on individuals such as George W. Bush and Tony Blair. The tension between the desire to highlight individual accountability on the one hand and the desire to contextualize it in a larger political analysis on the other continued throughout preparations for the WTI's culminating session in Istanbul. It occasioned animated controversies even about alternative conceptions of WTI posters and slogans—whether or not to include the proper names Bush and Blair.

Returning to the WTI's "sources of legitimacy," one participant at the

founding meeting openly asserted that "there is no way we can have a sort of obvious legitimacy." Instead, he said, "we will have to have a piecemeal legitimacy." The first "piece" in order was once again the idea of an individual's duty to react against an illegal and/or immoral situation. Another participant, however, found this unsatisfactory as the grounds for constituting a tribunal: "we can of course refer to our own conscience, but I do not think individuals come first. *We do represent something*. Otherwise we can say, well, my legitimacy is myself—No, I do not think that would make sense."[49] Yet, rejecting the claim to represent anything but one's own sovereign self, one who was able and qualified to pass judgment on and with "the world," was precisely the political position consciously embraced by the "individualist stance." But even if those gathered in Istanbul for the tribunal's founding did "represent" something, the question remained as to what or who it was.

In response to this question, one participant observed: "the meeting here *is made possible by*—well, first of all of course in many parts of the world people having the same idea—but then the Jakarta meeting and antiwar meetings in Brussels, and other meetings that I forget about now, having ratified and approved that this kind of initiative is very valuable and should go on."[50] Did this in turn mean that the WTI could claim to "represent" elements of the global antiwar movement who had gathered at these meetings? And if the WTI claimed its legitimacy was *derived* from "the people" or the global antiwar movement, would this amount to a claim to representation?

In the midst of the legitimacy discussion, a participant from Bangkok wondered:

> Just the whole question of speaking for others is very interesting and it really got me into thinking. On the one hand, we certainly don't want to represent people who do not want to be represented by us. But on the other hand, we have been invoking "the people" several times. So I'm wondering to what extent we can be talking on their behalf. Because as one of us has said, certainly there are differences among trade unions, for example, does that mean we cannot speak on behalf of them? There are differences among Iraqis, some of them supported the war, does that mean we cannot be on behalf of the Iraqis anymore? It is a very interesting question and I do not have easy answers myself.

In truth, many participants at the founding meeting had asserted and projected onto the global political terrain the notion of "the people" and the al-

ternative concept of "civil society" as a source of legitimacy for the tribunal. Precisely the fact that "the people" (whether "nationally" in Iraq or globally) harbored political differences, however, complicated any claim to "representing" or alternatively "being on behalf" of them. Not taking this situation at face value, another participant demanded more specificity: "we cannot represent right-wing constituencies in America—they are the people, too. . . . So people is too abstract a category; global society is full of people who are pro-market etc., etc. So first, people in the sense of the antiwar movement, that is our major source of legitimacy."

But simply to locate the tribunal's legitimacy in the global antiwar movement instead of "the people," "global civil society," or "humanity" would not ease the specific difficulty instanced by the problem of representation. Responding to this difficulty in the case of the global antiwar movement, another participant questioned the very question it posed: "One comment on talking on behalf of others: when we say legitimacy, does legitimacy mean talking on behalf of others? I do not think so. I mean, we get legitimacy from the fact that we-I participated in the protests, all of us participated, and many others participated." This position mobilized a powerful critique of the notion of *representational legitimacy*, while recasting the question on an immanent plane: thus, the legitimacy of a political action would not be constituted by its capacity to represent or speak in the name of an "other" who would structurally remain absent. Instead, the legitimacy of political action would be constituted through the practice of a political subject being "identical" to itself, as it were, or as a *manifestation* of what the subject already does.[51] To a significant extent, the global WTI network would act with this consciousness of being situated *within* the global antiwar movement, and performing *as part of it*, rather than claiming to be acting on behalf of it through any representational capacity.

Still, if there were no easy answers to the felt need to address the entangled issues of legitimacy and representation, from this need itself followed more questions. Articulating for the global terrain a classical problem of what is called democratic theory, the participant from Bangkok continued: "What I am more interested in is how do we concretize the people, that is if we want to say that this [tribunal] is on behalf of all the people, on behalf of all those opposed to the war, this is on behalf of everyone who feels that their government did not do anything for them—how do we actually involve them in the process?" This question echoed a consequential distinction demanded by a participant from Istanbul to separate the domain of rhetorical claims from that of political praxis: "How we achieve in reality the kind of legitimacy we

are looking for is different from when we write a text for making a declaration to the world. We find the source of our legitimacy in the first category: how we achieve legitimacy is a practical question."[52]

It was not enough therefore simply to declare that one was "entitled" to, or had the "right" to, constitute a tribunal on Iraq, either on account of being a multitude of individuals who were "world citizens," or on account of being part of the global antiwar movement. As many participants emphasized in their visions of the WTI, the tribunal had to be understood as an "open process" spread across time and space where, it was argued, "what we do and how good we do it is a source of legitimacy in itself." But what was to be done well to thus "achieve" legitimacy? While there were many suggestions—assuring the integrity of investigations, mobilizing within social movements, savvy media strategies, using the latest definitions of crimes—a participant from Baghdad intervened:

> For example, now they are writing the Iraqi constitution, the American authorities with the Governing Council. If this tribunal can analyze this new constitution, the process [through which] they are doing it, what kinds of changes they are doing to Iraqi laws, if we can expose this, if we can say that this is a violation of Iraqi people's rights . . . I think with this kind of activity, we can get legitimacy. So the point is what we do and how good we do it. Everywhere you have crimes, war crimes and occupation crimes. . . . If we can tackle these crimes one by one or sector by sector, and expose and talk and explain how it is a violation for the Iraqi people, I think for the Iraqi people we get legitimacy, because I am talking about legitimacy for the Iraqis.

In retrospect, it is important to note that even after this participant from Baghdad highlighted it as a distinct issue on the first day, at the WTI's founding meeting there seemed to be no *specific* concern over being legitimate in the eyes of those from Iraq. If the presumption of international law's universal legitimacy could account for this lack of concern by the legalist perspective, its absence is all the more curious in the case of the broad spectrum I am calling the political perspective.

A notable exception to this lack of concern was the intervention of a participant from Genoa in the morning of the third day, which unsettled the debate over the Platform Text and resulted in a "freezing" of the meeting, leading to a change of moderators. She had approached the question by

stating that she "did not want this meeting to legitimate something in which we take upon ourselves from our own will to represent the instance where the crimes upon Iraq are discussed on behalf of a movement that is not enough present here, and on behalf of people that do not have a voice in this meeting," implying by the latter "the Iraqi people." She argued that by the third day, this "real issue" had not yet been tackled, and there was still "no handle to tackle it" in the meeting.

The question was not, however, one of identifying how many Iraqi "voices" would have been enough to legitimately judge "crimes upon Iraq" and then assure their inclusion. Many participants had in fact affirmed that the WTI would specifically aim to involve "more Iraqis" in its continuous process of constitution. In retrospect, what is striking is that while it was recognized, in the words of a participant from London, that "you cannot talk about the Iraqi people, you can't talk for them and lump them all together as if they have a particular view," no one really seemed to think that "the Iraqi people" could be against the idea of a world tribunal *on Iraq*. Minimally, the question never seriously arose as to the legitimacy of the WTI vis-à-vis "the Iraqi people" as such, even when the resistance in Iraq against the occupation was acknowledged as a "source" of the WTI's own legitimacy. Thus, the question of legitimacy was discussed passionately qua ideas of "the world" and "tribunal," but surprisingly, not "Iraq."

Why would this be the case? Tellingly, a participant living in Hiroshima responded to the one from Genoa who had registered her objection to the WTI's self-legitimation in the absence of "enough" Iraqi participation: "We do not have a single source of legitimacy. We have really different sources of legitimacy. You can maybe make a hierarchy. Of course it is very important that we are open and look for voices from Iraq. But there are other reasons. After Iraq, there are other countries, the next victims and so on. It is broad." Curiously, in a certain imaginary of the WTI, and arguably of the global antiwar movement as well, it was as if Iraq and its people were caught in a no-man's-land between an "us" who was antiwar and a "them" who were pro-war. While "we" had disagreements on who "we" were and about who "they" were, "we" found the right to protest and judge what "they" did in Iraq. But this Iraq somehow remained as an *example*, or an *instantiation*, or a *particularization* of what "they" did. Thus, the moderator would conclude the legitimacy discussion by defining "us": "If we go as broad as the antiwar movement, which I think we should all believe we should go as broad as that, it will be taking all of us inside. Individualist, anti-globalization activists, anti-imperialists. . . . So

I believe we are not so far from each other in this legitimacy business, and if you feel like me, I think we could put it in our pocket and continue with the next agenda."[53]

That the World Tribunal on Iraq did not seem specifically concerned about its legitimacy vis-à-vis Iraqis at its founding meeting—however intuitive or counterintuitive this may seem—cannot be taken for granted and calls for some reflection. In my judgment, the reason the legitimacy problem centered on the constitution of "the world" (whether politically or legally) was because "humanity" was seen as the greater community that was violated by the war on Iraq. The kind of subjectivity that got mobilized in response was one that saw the war on Iraq as a threat on its own self, a self that in turn was a self of the world. To employ the language of international law, particular crimes committed against the people of Iraq were seen as universal crimes against humanity, or as the Jury of Conscience at the WTI's Istanbul session would declare in 2005: "the attack on Iraq [was] an attack on all of us."[54]

From the perspective of transnational solidarity, to be precise, the self offended by the war on Iraq was a "human self," rather than a "national self" acting in solidarity with another nation. This cosmopolitan understanding marks a significant shift away from affects of international solidarity. The fact that participants at the WTI's founding meeting decided to name themselves a "world" tribunal rather than an "international" tribunal bears witness as well to this situation. In the case of international solidarity, "fraternal" individuals would be subsumed under their national belonging, from which they would express and organize solidarity with other nations and nationals. Yet, there was next to no trace of this internationalist imagination in the language that the WTI produced in common. Instead, the Platform Text, written through three days and nights of discussion, prefaced the WTI by mobilizing a cosmopolitan imagination that claimed: "There is no court or authority that will judge the acts of the US and its allies. If the official authorities fail, then authority derived from universal morals and human rights principles can speak for the world."[55] This universalist claim, as well as the lack of care with which the tribunal's legitimacy was discussed vis-à-vis Iraqis at the WTI's founding meeting, signal a move away from "international solidarity" toward "cosmopolitan solidarity," along with its imperial pitfalls addressed in Chapters 3 and 4. Here, the important question reappears: how can we distinguish the cosmopolitan ethos of responsibility and solidarity that "grounded" the legitimacy of the WTI from the cosmopolitan ethos that conferred legitimacy, ex ante or ex post facto, to the constitution of a "liberated" Iraq?

Conclusion

Political philosophy, Jacques Rancière declares, "is the name of an encounter—and a polemical encounter at that—in which the paradox or scandal of politics is exposed: its lack of any proper foundation."[56] No other name can as accurately designate the encounter that facilitated the beginning that was to be the World Tribunal on Iraq. Whatever one may mean by a *proper* foundation, the WTI's constitutive politics was an immediate experience—hurtful or haunting for many participants—of the difficulty, if not "impossibility," attending acts of collective foundation. After the constitutional encounter in Istanbul, disputes, reflections, and emotions continued to flow forth in the WTI's then-nascent digital network, addressing a question that had placed itself at the center of discussion: was it a success or a failure? Now, however, "it" was endowed with a name, and with the possibility of continuing the polyphonic production of its language: the World Tribunal on Iraq could begin to operate without a center dictating its meaning.[57]

If the WTI's founding encounter was political philosophy in action—articulating and mobilizing concepts of legitimacy, authority, rights, duties, representation, citizenship, justice, law—then an assessment of the improper or imprecise mobilization of such concepts would not contribute to the task of critique. The latter's craft, I am convinced, is not to measure concepts' theoretical precision—as if such they had—against their practical profession. What is to be recognized is the meticulous *entanglement* of these concepts—at once in theory and practice—and their capacity to interpellate subjects. For this "interpellation"[58] cannot be taken for granted: *why*, for example, did the concepts of legitimacy and authority—and the identification of their "sources"—consume the foundational encounter's living agenda? Why did the nascent WTI found itself giving an account of itself in such terms to begin with? Before making a declaration to the world of itself, and before constituting itself as such, it certainly had no doubt that it had the "right" and the "authority" to do it. And if the WTI's account of itself was necessarily incomplete where it could not elucidate the foundation of itself, what kind of "subject" was it?[59] As must be evident, these questions concern not only the WTI but also whomever speaks the language the tribunal found itself speaking: the state, the citizen, the human and their international law.

But was the WTI a "subject" or an "action," was it a "means" or an "end"? As it was constructing an account of itself—not only at the founding meeting, but also during and with its many sessions, press kits, websites, pamphlets,

books, interviews, documentaries, even as "we" speak—WTI activists mobilized this ambiguity productively until the very end.[60] The World Tribunal on Iraq was at once the subject and the action, a means and an end—in short: the WTI was a *manifestation*. And even though the Platform Text drafted at its founding meeting was not a manifesto—or because it was not—it could facilitate the creation of a globally networked platform where elements of the global antiwar movement, including the anti-occupation resistance in Iraq, could manifest themselves publicly in the very act of holding the occupiers to account.[61]

As superfluous as it may seem to make it explicit, as long as a danger lurks with its tendency to reduce "action" to "words," this must be emphasized: a "subject" such as the WTI would not have existed if it did not act, and no such "action" as the WTI would have taken place without this subject. If the *texts* of the WTI's founding act are deconstructable to the bone, just like any righteous (un)foundedness, the bodies that day after day, month after month, year after year constituted the WTI in action can still remain untouched by such deconstruction, not the least because *action* is not only a lingual, but also a touching affair. For this reason, while "the legitimate subject which no text is able to found" can indeed feel the need of "proving to the other that there is only one world and that one can prove the legitimacy of one's action within it," it must also be understood that this "proof" demands more than words.[62]

What I have attempted to demonstrate in this chapter is the way in which a multitude comes—or not—together, while it still works and acts in common along shared and created vectors of sense and action.[63] In tandem with the common political imaginaries the tribunal founders shared, I have reflected on disagreements among them and highlighted lived tensions between *legalist* and *political* imaginaries that animate rival visions of global peace and justice. In the larger context of the WTI's constituting act, however, the two perspectives that I mobilized heuristically to make sense of the founding meeting—the legalist and the political—tend to break down.

For one, the political perspective's individualist stance, which articulates a version of world citizenship—despite its potentially critical assessment of international law—bears fundamental affinities with a cosmopolitan legalist perspective that takes the (global) individual as its starting point. Both perspectives could agree with *legal cosmopolitanism*, with scores of scholars who advocate for the "institutionalization of global civil society" and the development of a cosmopolitan law and order based on the universalism of human rights.[64] While many of these scholars, including Richard Falk—spokesperson

of the Panel of Advocates at the WTI's final session—passionately opposed the occupation of Iraq, they nevertheless celebrated other military ventures also led by the United States and its allies in the name of human rights, democracy, and liberation. Given this situation, I inquire further in Chapter 4: how is the "law's empire" advocated by theorists of legal cosmopolitanism different from what they oppose as "empire's law"?

Similarly, the lack of care with which the WTI's legitimacy in the eyes of Iraqis was addressed at the founding meeting—cutting across differences within and between political and legalist perspectives—registers another commonality that I will explore in the following chapters. I am convinced that such lightheartedness is the symptom of a universalism whose difference—if any—from "imperial universalism" must remain an ardent concern. This is especially the case in that thorny geography of cosmopolitics, on whose grounds wars, occupations, and antiwar movements alike are waged through the language of human rights and international law, in the name of freedom, liberation, and democracy.

Ultimately, the World Tribunal on Iraq's founding act raises questions beyond its at once humble and ambitious "principal objective of telling and disseminating the truth about the Iraq War,"[65] as it prompts deeper questions. What is the foundation, if any, of "our" politics: why do we care about injustice and undemocratic practices, about the freedom and the happiness, the life and the death of one another, whether here or there?

CHAPTER 2

Whose Tribunal?

Introduction

Chapter 1 provided a detailed analysis of the three-day meeting in Istanbul through which the World Tribunal on Iraq (WTI) was founded. Identifying constituent tensions between legalist and political perspectives, it examined the self-authorization of a "world tribunal" to explore the constitution of global civil society in action. These two perspectives reflected overlapping yet rival cosmopolitics, offering competing visions of global peace and justice. Multiple views about the most appropriate way of *practicing* the idea of a "world tribunal" were staged at the WTI's founding meeting, which involved the challenge of conceptualizing the commonality constituted by diverse local hearings that were to form the tribunal globally. What would hold the numerous tribunal sessions together as a global project in the singular if each local session of the WTI was to be "autonomous"? I now return to the WTI's founding meeting to analyze efforts to establish "coherence" across various tribunal sessions and to constitute the global network in relation to its constitutive parts. These discussions about "unity in diversity" were consequential for the extraordinary praxis of the WTI and the different forms the tribunal eventually could and could not take around the world.

I then illustrate how the "world tribunal" imaginary unfolded in action by describing its culminating session in Istanbul in June 2005. While the World Tribunal on Iraq was being organized, the United States State Department, too, was at work constituting its own tribunal on Iraq, known as the Iraqi High Tribunal (IHT). In the last part of the chapter then, to offer a comparison, I expand my analysis of the WTI to explore the human rights politics the

IHT enacted when it executed President Saddam Hussein in the name of humanity. Especially significant here is the limited, procedural way in which one of the most influential human rights NGOs, Human Rights Watch, criticized this tribunal founded by the United States on account of its violent victory in Iraq.

"As We Are a Network": One or Many Tribunals?

At the WTI's founding meeting in Istanbul, activists confronted the diversity among themselves, which troubled their approaches to practicing the very idea of a "world tribunal." One of the challenges resulting from their plurality was the problem of assuring some type of "coherence" among local sessions of the WTI that were to take place around the world. As I noted in Chapter 1, that the tribunal on Iraq would be a global initiative was asserted at the outset. However, the nature of this globality was fiercely contested. If the WTI as a transnational project was to be larger than the sum of its local sessions, the problem of conceptualizing and enacting the authorless "surplus" of the horizontal network was among the most difficult challenges faced during the WTI's founding meeting and its subsequent processes.

For a nonhierarchical network organization, as the WTI was to be, the relevant question could be formulated thus: in the network form, how can the autonomous nodes of a network—in this case, local tribunal sessions as well as "free-floating" individuals—be said to constitute, if at all, a singular subject?[1] At the WTI's founding meeting in October 2003, this problem was addressed as a matter of "coherence" among diverse tribunal sessions to be organized around the world. In turn, coherence was sought at two levels: first, in terms of a common structure or charter that would be applicable to each local initiative; second, by formulations of a "politics" common to all WTI sessions. Overall, whereas some participants favored an "integrated" global endeavor, others argued for a looser "coordination."

In fact, many participants had arrived at the founding meeting in Istanbul having already initiated some effort toward a tribunal in their own local context, the planned activities and imaginations of which were presented at the meeting.[2] It was further hoped—indeed expected—that once plans for the WTI were publicized globally, new local initiatives would seek to join the global network (and many did). The question then was of "finding a way to bridge the tribunals," coupled, however, with the fear, felt more intensely by

those who preferred an integrated model, that "otherwise, we will not be a global effort."[3]

At the founding meeting, in contrast to the political perspective, the legalist perspective (both introduced in Chapter 1) insisted on developing an integrated or uniform model for the totality of the global effort. The bridge that would unite all local sessions, the legalist perspective argued, was what one of its protagonists called "the language of law." This language could serve as a bridge among all WTI sessions, it was thought, "because it is a language that many authorities use." According to the legalist, in the common language of law spoken globally by "the authorities," a ground for the very globality of the WTI was also to be found.

The legalist perspective, in other words, asserted international law as the lingua franca of both those governing the world and what Michel Foucault called "the community of the governed."[4] Yet it was precisely the "the language of authorities" that other WTI participants wanted to dispute through global WTI processes, as they desired to speak in other grammars as well.[5] For this reason, the political perspective would object, in the words of one participant, that "law is an alienating language" and that the exclusive translation of the WTI's efforts into law's language would amount to being forced into a "straightjacket."

Nonetheless, a lawyer from New York, making a case for the legalist perspective, circulated a "charter" for the WTI at the founding meeting, which was prepared ahead of time by the International Association of Democratic Lawyers. She insisted that if not this particular charter, then a similar one had to "apply" to the whole global effort. In the charter were outlined rather conventional functions of the "prosecutor," "judges," "secretariat," and other organs of a tribunal. Even if under different names, these functions had to be specified in a "unified way" for the totality of the WTI effort, she argued—for each and every session, as well as the concluding session in Istanbul—or else, this participant claimed, "we are not a worldwide effort." For the legalist, what would substantiate the globality of the WTI was the *identity* of its sessions' procedural "structure." Short of this structural identity, only disparate local initiatives would remain.

The political perspective, by contrast, embodied to a significant extent the normative valorizations of the alter-globalization movement and wished to practice a decentralized model that would embrace the movement's motto, "unity in diversity."[6] In this version, each local initiative would have the "autonomy" to decide for itself which aspects of the war and occupation in Iraq

it would address, and how it would address them. Each initiative would decide, for example, if it wished to employ what a participant from Stockholm called (in disapproval) "this intensive theatrical arrangement of prosecutors and judges."

In further contrast to the legalist perspective, a participant from Brussels argued not only that "going for one paradigm, one strict model for all hearings is extremely difficult," but also that it was "counter-productive." Instead, the activists of each WTI session had to determine "the format it needs to have maximum effect." More importantly, he asserted: "As we are a network, let's go for a very open, general format that can receive many formats as endeavors, although our common end is very clear I think, even if some would more stress the legality, and some would stress the political, resistance side." In this specification, *because* the WTI was a network, it had to have an open format that was able to "receive" or establish links with emergent tribunal sessions and their diverse structures. However, in the extended dispute over the question of "one or many tribunals," precisely this specification was contested: (*a*) if the WTI was indeed going to be established as a network, and (*b*) what the precise character and implications of a "network" as a political subject was. Confusingly, while most participants agreed with the principle of local autonomy and the network form of the WTI, they drew different conclusions from them. For some, a network meant "a decentral global endeavor, [where] we do not want a central committee and one tribunal." While positing the same principles, others argued that the WTI, as a networked "world series" of autonomous tribunal sessions culminating with a final event in Istanbul *did* constitute a global tribunal in the singular.

While it was being argued that "we must stick to the idea of a global international tribunal" where "autonomy must be considered as the base principle inside the global concept," a participant from Bangkok questioned the precise meaning of "autonomy": "I was wondering if we can define more precisely the word 'autonomous.' What do we mean by 'autonomous' in each of the initiatives, and how do we see them in relation to the world tribunal? Are we going to be a world tribunal or world tribunal*s* on Iraq? . . . If you are saying that as one tribunal, you have the Brussels tribunal, you have the Danish tribunal, you have the Mumbai event and all the other events—and conglomerate them together for some reason, as a *federation* of different initiatives, which we all call '*the* Tribunal,' I am not so sure if I can support it."[7] The constitutional vocabulary in this line of questioning was not coincidental, as at stake was the political nature of the global body being imagined. How would its constituting

units relate to and articulate with each other? Could a conglomeration of city-based initiatives form an assemblage of global quality? The participant from Bangkok continued: "A minority of us are not working directly on the sessions of the tribunal. I understand why you want to protect the autonomy of your initiatives. But the question for us—and I hope you understand why we are so interested in this question: when we go back to our countries and our antiwar movements and package this, and try to encourage them to support this, what do we tell those people, how do we tell them that this in fact is an international initiative when different groups are free to do whatever they want? What is it that will bind this tribunal together as an international event?" Underpinning the anxiety over the "international" quality of the WTI was the tension—which did not prove easy to resolve—between the unlimited autonomy granted to local initiatives on the one hand and the claim that still and somehow all would be bound by the unspecified essence of a "global" endeavor.[8]

Moreover, local sessions were not the sole nodes constituting the WTI network. There were those individuals who could rightly point to another difficulty: "I do not have a local group, and I do not know where I am going to locate myself." As the global process got underway in the following two years, "the problem of individuals"—which could emerge as a problem because individuals' participation, qua individuals, was desired, rather than dismissed—within the paradigm of constitutional autonomy at the local level would only be exasperated. This was the case because individuals frequently contributed to global discussions over WTI e-mail listservs as independent persons, and not through the "autonomous" platform of their local initiatives (if they had one).

Although, for instance, the tribunal committee in Brussels often took collective positions in the course of the global process and demanded the same from what it called, despite objections, other "national committees," this was not to be the case. As groups of individuals whose internal political positions continued to differentiate while the global process got underway, one could speak less and less of "the Istanbul committee" or the "the New York committee" as such when denoting the units of the global process. Instead, individuals who had (and had not) been involved in local organizing would contribute to global discussions in their personal capacity, and would often form translocal alliances with other individuals when debating critical issues. It is important to note as well that many individuals who were involved in local tribunal sessions rarely, if ever, participated in global discussions. While varying degrees of English proficiency could be cited as the primary reason for this lack

of participation, it was not the only one, as New York City organizers could testify.[9]

Once again, because the WTI aimed to become a horizontal network that institutionalized the principle of local autonomy, it had to formulate and respond to a difficult question: in the network form, how can the autonomous nodes of a network be said to constitute, if at all, a singular subject?[10] In the midst of this discussion, toward the end of the third and last day of the WTI's founding meeting, everything seemed to confirm what Hannah Arendt once observed of action, namely that "he who acts never quite knows what he is doing."[11] As late as the last few hours of the meeting, one could exclaim in frustration, translating the feelings of the rest, "I am finding it very difficult to imagine this tribunal!" Difficult indeed it was to imagine.

In response to this participant and others, many argued that it was a matter of celebration rather than regret that "the novelty of this tribunal is its diversity. We are using different formats and focusing on different issues." In this framework of "unity in diversity," most participants posited *a common purpose* as that which qualified the World Tribunal on Iraq as a global endeavor in the singular. "We are united in our effort to expose the crimes of the US and the new imperial world order. We all do that," one participant summarized. Moreover, the anticipation of the culminating session in Istanbul—which was imagined as the responsibility of the whole network—helped produce a sense of coherence that could facilitate the constitution of the WTI as a singular subject with a shared goal.

With regards to the final session in Istanbul, a participant pictured a conclusive event that would involve "high level, prominent international figures [to achieve] a definite condemnation and rejection of this preemptive war and imperial politics—to condemn it in a legal way, and in a moral way, and a political way." Yet, given the diversity of politics that different proposals for various local WTI sessions registered, it was still difficult to decide *in which political way* such a condemnation of the war on Iraq would be presented. Surely, despite the heuristic concepts I have been deploying—"the legalist perspective" and "the political perspective"— there was a distinctive, if implicit, politics to the legalist perspective as well. And what kind of politics was this? Was it compatible with the spirit of the whole endeavor? Or, alternatively, was the "legalist perspective" in fact the true spirit of the WTI?

These questions came to the forefront of debate when the two participants from London at the founding meeting presented their plans for an event they wished to associate with the emergent WTI network. The two colleagues from

the Institute for Law and Peace had been working with a group of public interest lawyers from the London-based Peacerights group to hold what they called "a legal inquiry." In this event, after considering "written and oral evidence from expert witnesses," a panel of "eight leading academic international lawyers" would seek to answer the following question: "Is there sufficient cause and evidence for the International Criminal Court Prosecutor to investigate members of the UK Government for breaches of the ICC Statute in relation to crimes against humanity and/or war crimes committed during the Iraq conflict and occupation in 2003?"[12] As the Londoners explained, putting pressure on the prosecutor of the ICC to initiate a case against Tony Blair was "really what we had in mind with framing the inquiry." After their presentation to the meeting, however, a question was immediately raised in alarm: "How are we going to decide in the end what the relationship of each and every session—or in this case 'the legal inquiry'—will be to the world tribunal?" This question reflected the considerable uneasiness in the room with "the legal inquiry," as some participants found it too limited an endeavor and did "not see how it [fit] into ours." Why would this be the case? One participant asked the colleagues from London about the precise role of the antiwar movement in this legal inquiry to be conducted by experts of international law: "In the international antiwar movement, Stop the War Coalition [of the United Kingdom] is quite influential, especially the groups inside them, especially in the coordination meeting at the European Social Forum and the World Social Forum. So I was wondering, if there are plans to invite them, or if it is an objective."[13] In response, one Londoner listed the three organizations in the United Kingdom—all associations of lawyers—that he claimed were "relevant for these things." Once the legal inquiry was organized, he stated, then they would "get to the next stage," establishing contacts with the antiwar movement after the fact. The aim then would be to disseminate their legal determinations, which they hoped "would be something that people can use as reference."

This perspective ran contrary, however, to what other participants had found politically valuable in the WTI, which, as a host from Istanbul had underlined, was about "letting people get involved in the process, which is not one of experts." Further, it had already been argued that "a legal tribunal [would] not add to the consciousness of common people or our own." Instead of producing a "reference document" that was to be presented to movements as a matter of fact, and after the fact, another participant reminded the meeting, it was agreed on the first day that the tribunal would attempt to produce

"mobilizing documents." This meant that the making of each tribunal session had to take place *within* antiwar movements, where the latter, rather than experts of international law, could claim authorship of whatever determinations were to be reached.

Yet another objection raised against the "legal inquiry" was about the politics it registered in contradistinction to the politics of the World Tribunal on Iraq:

> I also think the objective of filing a case against Blair in the ICC has tremendous political value added. But my question is—maybe my understanding of the premise of this [WTI] tribunal is wrong. We are in fact creating this tribunal because we don't think that the ICC is adequate. So my question is whether this [legal inquiry] initiative—which is a very worthy initiative—is in fact a parallel initiative but not a part of [the WTI]. This goes back to the question of the very relationship of different initiatives. Because if we have one initiative, which believes in the ICC, and another which says, "we don't think that the ICC is adequate after all," I do not know how we can relate and put them together.

Thus, the question of integration vs. coordination among various tribunal efforts was raised in terms of a *political consistency*. Another participant echoed this statement and asked whether the WTI was "going to propose for the whole project political aims that might, as in this case contradict."

In this context, a WTI organizer from Istanbul attempted to resolve the posited contradiction between the politics of the legal inquiry and that of the WTI by observing:

> We have been saying all along that the worldwide anti-war movement had many colors and many perspectives in it. It included a variety. In it there were people who thought the ICC was valuable and who thought that the ICC would not function. . . . We have been saying all along that we want this tribunal to reflect the many colors, the variety of the worldwide anti-war movement: we cannot say that this tribunal is formed because we thought the ICC was not working. I don't think we can say that. Because in the working of this tribunal, there are people who think it is possible to approach the ICC in some way—so there should be room for that.

In this argument, the contradiction observed *within* the politics of the WTI—in the way its different hearings would approach the ICC, for example—was acknowledged and yet disavowed as a legitimate manifestation of the diversity of the global antiwar movement itself.

And yet, to ensure the coherence of the WTI as a whole, a participant from Brussels opposed its "integration" with the legal inquiry. Although he was "very convinced" that the legal inquiry, with its exclusive predication on the hope that the ICC might function with regard to Blair, was "not contradictory to what we [were] doing here," he was still afraid it might "dilute our specific legitimacy" in the WTI as one actively constituted by civil society. While not necessarily contradicting the WTI, the legal inquiry was, at the same time, "not the same thing"; or in the words of another participant, it was "something of a different quality." After long debate, the participant who had perceived a contradiction between the politics of the WTI and that of the legal inquiry in London insisted: "The question, the issue is not whether it is worthwhile to go to the ICC. I myself would believe that. The question is whether this would not undermine the political objective of this [WTI] initiative. For example, what if the ICC does get Blair, indict Blair and condemn Blair? If that happens, then people will tell us: 'See the ICC works, international institutions work. Why don't you direct your efforts, your energies to making the US sign and not have an independent tribunal at all? Because the ICC works after all, direct all your political energies to making the ICC work.' " The finding animating this objection was that the "political objective" of the WTI could not be limited to, and was qualitatively different from, an agenda of reform at the level of existing global institutions. Many nongovernmental organizations—such as those networked through the Coalition for the International Criminal Court[14]—had been campaigning to have the United States and other countries ratify the ICC, without ever attempting to form a tribunal themselves. Whereas any such reform at the global level could be proposed without the constitutive project of an alternative institution, the World Tribunal on Iraq had in fact chosen to do the latter.

In effect, the Londoners advocated for what Michael Hardt and Antonio Negri have called "a noble but increasingly utopian strategy"[15] of arguing that the United States should abide by the ICC.[16] Still, many participants at the WTI's founding meeting did not think such a strategy created a "contradiction" between the politics of the legal inquiry and of the World Tribunal on Iraq. A participant from Genoa concluded: "In a way, I do not see the problem

'what if ICC works.' Not only because I think it may not work, but also I think it is up to us to put the situation in such a way that the issue of ICC is one of the issues."

It is important to note that the International Criminal Court was not the only institution of global governance that functioned as a site of disagreement within the WTI network as the tribunal attempted to formulate its own politics. Another global institution in question, because it could not be used to prevent the war or to deliver justice, was the United Nations (UN) along with its numerous agencies. Within the WTI network, as well as in the global antiwar movement itself, there were those who thought that the United Nations had to be "resurrected from the sidelines" to which it had fallen in the 2003 war on Iraq.

Others, however, assigned a more dubious role to the United Nations, a role that involved something beyond mere victimization by the United States. As a participant from Stockholm observed at the founding meeting:

> When the US started this attack, they were isolated: they went openly against the UN, international community as a whole, governments and people. Now what do we see half a year later? We have this resolution from the Security Council [Resolution 1483] adopted two weeks ago, which accepts the aggression in practice, and it equips the aggressor with UN mandate. I was in the UN mechanisms. They have put a lid on [it]: "nothing must be discussed on any violations of human rights after the US occupation." That was the formal decision by the Commission on Human Rights and ECOSOC this summer [2003]. No examination of human rights violations after the end of Saddam Hussein, only before.

In this way, it was argued by a participant from Istanbul, "the US succeeded in getting the UN to condone the war of aggression" and the United Nations was *implicated* as a part of the problem to be addressed. Yet another participant observed: "the United Nations is in effect a trade union of governments and very often what comes through is not the will of the people of the world." In response to the general sentiment in the room critical of the United Nations, one contributor to the meeting found it necessary to argue: "I think if we join the American government's critique of the UN and try to hurt an organization, which is so weak at the moment, it would be very wrong. . . . It is still somebody who tries to limit the power of the USA. Or we should at least

keep our mouths shut—we should not join the US government in destroying the UN when we have no alternatives besides our beautiful visions." For many others, however, an unforgivable fact—which complicated any proposal to keep silent about the violent role of the United Nations as an institution of international law—was, in the words of a participant from Brussels, that the "first Iraq war [1990–91] was with the approval of the United Nations. They approved the embargo [twelve-year sanctions imposed on Iraq]. So what is the question? International law?"

This perspective on the violent role of the United Nations resonates well with how the jurist Carl Schmitt perceived the ancestor of the United Nations, the League of Nations. Far from abolishing wars, Schmitt claimed, this institution "introduces new possibilities for wars, permits wars to take place, sanctions coalition wars, and by legitimizing and sanctioning certain wars it sweeps away many obstacles for war."[17] In this context, Schmitt also critiqued the "new pacifist vocabulary" advanced by liberalism for the world stage, whereby "war is condemned but executions, sanctions, punitive expeditions, pacifications, protection of treaties, international police, and measures to assure peace remain."[18] Similarly, many participants at the founding meeting emphasized how, far from a peaceful measure, the UN-imposed sanctions on Iraq during the 1990–91 Gulf War were, in the words of one participant, "by far the main killer in Iraq," claiming over a million lives before the invasion of the country by US-led forces in 2003.

It was concluded, nonetheless, that each local session of the WTI would decide for itself whether or not it would address the period of the UN-imposed sanctions in its deliberations. As many participants at the founding meeting argued, limiting the focus of the WTI to the 2003 war on Iraq would give the tribunal the advantage of what one participant called a "compact problematic," since determinations of international law and of antiwar movements would more readily coincide. Moreover, as I discuss later in this chapter, the WTI's culminating session in Istanbul would attempt to complicate this "compact problematic" by implicating international law and its institutions in the destruction of Iraq.

Ultimately, by the end of three intense days of debate at the WTI's founding meeting, participants equipped themselves with a consensus on the principle of local autonomy. It was agreed that no global charter or structure would be imposed on any local hearing of the WTI. Instead, a common political purpose was confirmed as sufficient to ensure "unity in diversity" among various WTI sessions. Coupled with the anticipation of a global process yet to take place, it

could be affirmed for the whole WTI network, "we are connected, yet have our own spaces to unfold this imaginary in different ways." I now turn to the example of the WTI's culminating session in Istanbul to demonstrate how the World Tribunal on Iraq imaginary unfolded in action.

Istanbul

> *Something extraordinary is happening here.*
>
> *Many different strains of people from around the world have converged here, in this meeting held among ancient stone walls, to reclaim a voice for what is right and just, and it is a wonder. In fact, it is breathtaking that we are all here, now, together.*
>
> *Here, there are people who were well-integrated into structures of power when they found themselves put in positions that their conscience could no longer carry, such as Denis Halliday and Hans Von Sponeck, both former assistant secretary generals at the UN. There are people whose hearts carried them to become voices against injustice and cruelty even though a life of comfort and the glitter was theirs for the taking, such as Arundhati Roy. A young American veteran with California surfer-boy looks and mannerisms sits on a panel, moderated by an Iraqi anti-war and democracy activist who was imprisoned in Abu Ghraib and tortured by the Baathist regime, with participants ranging from an Iraqi secular feminist, to an Iraqi lawyer, who wears the headscarf, representing detainees and torture victims, to Iraq's Al Jazeera correspondent who was in Fallujah during the assault.*
>
> *Many here have been thrust into a situation not of their own making but nevertheless took it on with courage and dignity, and their hearts now embrace the world, such as the jury member representing the mothers of the disappeared from Argentina, Plaza de Mayo, who starts many of her questions by saying "as a mother . . ." and often asks about the children.*[19]

The culminating session of the World Tribunal on Iraq took place from June 23 to June 27, 2005, in the Imperial Mint of the Ottoman Empire, on the historical grounds of Topkapi Palace. On the yard of the palace, in a blissful

summer night pregnant with anticipation, the opening evening of the tribunal featured celebrated musicians Erkan Oğur and Ismail Demircioğlu with their Sufi interpretations of Anatolian songs, and the Ayşe Tütüncü Piano Percussion Band from Turkey, as well as Omar Bashir from Iraq, gifting jazzy improvisations of Arabic music on his oud. As Melek Taylan, a host from the tribunal committee in Istanbul observed in her inaugurating remarks before an energetic crowd assembled for the opening night, the physical grounding of the WTI had to be a powerful reminder that like all preceding it, including the Ottoman Empire in whose ruins the tribunal was now taking place, "the American empire, too, one day shall fall."

The Imperial Mint was a complex featuring dissimilar spaces that could be occupied creatively for various purposes during the tribunal. While its smaller rooms were used by the seventy-five WTI volunteers on duty and by the media for their frantic work throughout the tribunal, the yard of the Imperial Mint was where a carnivalesque and remarkably international crowd gathered by the makeshift café and food stalls constructed for the tribunal. The largest indoor space was reserved for the proceedings, which was attended by about a thousand people each day. This space prided vast windows, exceptionally high ceilings, and an exposed stone wall that provided the background to the tribunal's main stage. In the middle of the stone wall of the Imperial Mint, running behind the platform where the long table of the Panel of Advocates was placed, three old wooden beams were nailed to the wall—perhaps the residues of an attempted restoration—that resembled the capital letter "H." Initially, the organizers of the tribunal had wished to remove these large beams, but on second thought (in English) and with some humor, the beams were eventually welcomed as appropriately marking, in the background of the tribunal, an "H—for History."

For the purposes of the tribunal, a new wide platform, slightly higher than the floor (floor level was where the audience, and the Jury of Conscience within it, were seated) was built. This was where the WTI's Panel of Advocates, numbering fifty-four persons, sat during each session of the proceedings in panels of five or six, facing the audience. Two vast, synchronized screens stood to their left and right, projecting video images of the speakers for the large audience, as well as visual evidence provided by the advocates and witnesses. When their turn came to speak, the advocates and witnesses would use the lectern placed to the right of the audience. At the opposite side of the hall, behind the audience, another platform stood, which was reserved as a permanent setting for the numerous cameras of the mainstream media

Figure 2. Arundhati Roy delivering her opening speech; "H" for "History" behind her, between two projections of the WTI logo. Photo taken close to the stage by friend of the author.

in attendance. This platform was also where the staff of the US-based grassroots satellite network Deep Dish TV sat as it streamed the live proceedings of the WTI over the Internet for three days. Three compartments housing a team of simultaneous interpreters who had volunteered their labor for the WTI were also located there in the back, facing the tribunal's main stage. Throughout the proceedings, there was simultaneous (and very passionate) translation, from morning until early evening, in three languages: Arabic, Turkish, and English. The audience, both from Turkey and abroad, had to preregister, although when the day came, no one from the hundreds who flooded the Imperial Mint to witness the tribunal was turned away. Participants from most WTI sessions were also present in Istanbul: here Koreans were performing street theater in a spacious yard turned into a buzzing outdoor café, there activists from Brussels were chatting away with tribunal organizers from Copenhagen and Tokyo. In fact, the yard of the Imperial Mint was often as crowded as the tribunal hall, with tribunal participants and audience members eating, talking, smoking, and drinking bottomless glasses of tea together.

On June 24, 2005, at 9:00 a.m., the World Tribunal on Iraq's final session began with the opening statement of the spokesperson of its Jury of Conscience, Arundhati Roy. She spoke to hundreds of people holding their breath, some drawing their translation headphones closer to their ears, while the only sound one could hear, except her voice, was the snapping of cameras. After marking the significance of having the WTI's culminating session in Turkey where the government, just like in India, had been an ally of the United States in its Global War on Terror, Roy declared:

> The Jury of Conscience at this tribunal is not here to deliver a simple verdict of guilty or not guilty against the United States and its allies. We are here to examine a vast spectrum of evidence about the motivations and consequences of the U.S. invasion and occupation, evidence that has been deliberately marginalized or suppressed. Every aspect of the war will be examined—its legality, the role of international institutions and major corporations in the occupation, the role of the media, the impact of weapons such as depleted uranium munitions, napalm, and cluster bombs, the use of and legitimation of torture, the ecological impacts of the war, the responsibility of Arab governments, the impact of Iraq's occupation on Palestine, and the history of U.S. and British military interventions in Iraq. This tribunal is an attempt to correct the record. To document the history of the war not from the point of view of the victors but of the temporarily—and I repeat the word temporarily—vanquished.[20]

Indeed, the World Tribunal on Iraq, since its inception, had positioned itself against "victors' justice" and "victors' history." As many WTI participants report in the documentary film *For the Record*, produced by a group of WTI activists themselves to tell a story of the WTI, the desire to constitute and document memory, a counter–official memory, was a fundamental drive in establishing the tribunal.[21] For the WTI organizers knew, in the words of Müge Gürsoy Sökmen, a member of the WTI's Istanbul Committee, that "the records had to be kept because the US and its allies, who waged a war of aggression mobilizing everything at their disposal including lies and coercion, would not hesitate to rewrite history."[22] The WTI sought to transmit a counter-history of the Iraq War into the future, just as the Russell Tribunal had done for the Vietnam War a generation ago.

Following Roy's opening statement, the tribunal's Jury of Conscience was

presented to the audience. The basic concept informing the selection of the jury was—as their seating among the audience was to symbolize—that one did not need to be an expert, either in law or in history, to be able to judge the US-led war on Iraq. One of the four members of the jury from Turkey was a mine worker from the city of Zonguldak, Ahmet Öztürk, who had been active in local civic organizations; another was Ayşe Erzan, a physicist with a UNESCO award; third was Murat Belge, a renowned literary critic, columnist, and publisher; while the fourth was an "honorary member" of the jury, Mehmet Tarhan, a conscientious objector and a LGBTQ activist who was imprisoned during the tribunal for his refusal to serve in the Turkish military. Tarhan's honorary participation in the WTI's Jury of Conscience was important not only symbolically, but because it facilitated the activities of an anarchist and anti-militarist constituency at the tribunal who were engaged in a global campaign to ensure his release from prison. The WTI provided a global forum to publicize Tarhan's case, which was eventually taken up by Amnesty International at the end of 2005.[23]

Other members of the WTI's Jury of Conscience included two individuals from the United States, Dr. David Krieger of the California-based Nuclear Age Peace Foundation, an NGO working to abolish nuclear weapons; and Eve Ensler, feminist activist and author of the celebrated *Vagina Monologues*. Eve Ensler, as well as another member of the jury in Istanbul, François Houtart—one of the founders of the World Social Forum and a young participant in the Russell Tribunal of 1967—had served in earlier WTI sessions, in New York and Brussels respectively. Incorporating individuals who had already played roles in previous WTI sessions into the Jury of Conscience and the Panel of Advocates was conceived as a concrete way of interfacing various local sessions in Istanbul. This strategy bore extra advantages, as the experience of some with the WTI processes encouraged the composure of others in the face of an overwhelming task.

Other members of the jury, fifteen in total, included Miguel Ángel de Los Santos from Mexico, a lawyer who had risen to prominence (and had become a target himself) for defending Zapatista guerillas against the Mexican government in Chiapas. Yasmin Sooka from South Africa's Truth and Reconciliation Commission, who had to cancel her trip at the last moment, would also have served in the jury. Jae-Bok Kim, a South Korean priest who had gone on hunger strike for fifty-eight days upon the South Korean government's decision to send troops to Iraq, as well as the author Rela Mezali, an anti-militarist and feminist activist from Israel, were members of the jury. Lydia Miy de

Almeida from Argentina's Madres de Plazo de Mayo organization seeking justice for the disappeared during the Dirty War years; as well as Chandra Muzaffar, a scholar and human rights activist from Malaysia; and, from Iraq itself, Salaam Al Jobourie, a young journalist working in Baghdad, whose village had been destroyed during the war—all were members of the Jury of Conscience in Istanbul.

There was no obvious way members of the jury—from Arundhati Roy to Mehmet Tarhan—were connected, except by the explicit assertion that they were persons of "conscience." For the organizers of the Istanbul session, this assertion was not a claim to mark members of the jury as special cases among others. To the contrary, the designation "conscience" was imagined as a way to reclaim a legitimate capacity to judge as ordinary persons, in contradistinction to the expert credibility of professionals of international law. Similarly, in WTI's Istanbul session, no attempt was made to constitute an impartial or "neutral" jury. Rather, persons were sought as members of the Jury of Conscience who could demonstrate the diversity of the worldwide outcry against the war on Iraq. In this way, principles that informed the selection of the jury in Istanbul reflected what I called, in Chapter 1, the *partisan legitimacy* of the WTI.

Following the presentation of the Jury of Conscience, Professor Richard Falk gave an opening statement on behalf of the Panel of Advocates as its spokesperson. Drawing a legal and political framework that situated the World Tribunal on Iraq as an engagement with the politics of global justice, he asserted that the United Nations, "in a spirit relevant to the WTI, confirmed in its opening words that it is the peoples of the world and not the governments or even the UN that have been entrusted with the ultimate responsibility for upholding this renunciation of war: 'We the peoples of the United Nations determined to save succeeding generations from the scourge of war . . .' that set forth the duties of states in the UN Charter. This tribunal is dedicated to precisely this undertaking as a matter of law, as an imperative of morality and human rights, and as an engagement with the politics of global justice."[24] It was in this context that Falk asserted, "when governments and the UN are silent, and fail to protect victims of aggression, tribunals of concerned citizens possess a law-making authority." The constitutive power predicating the provision of global justice was not, in other words, the vested prerogative of nation-states, but of citizens of the world. Clearly, Falk underlined, this sort of "law-making authority" was not based on the possession of the means of violence to enforce political will, but was one that placed "its trust for the

future . . . on conscience, political struggle, and public opinion." And in practice, when exercising this "authority," the WTI's Istanbul session had decided to mimic neither the performative arrangements of official institutions of law nor their requirements for competence. Thus, affirmed Falk, members of the Panel of Advocates were "knowledgeable, wise and decent, but not legally trained specialists."

Organizers of the WTI's Istanbul session had indeed consciously chosen the singular function of "advocates" in conceptualizing the tribunal's procedure, instead of the duality constituted by "prosecution" and "defense" (or amicus curie), which was the case for some WTI sessions, for example in Japan and Belgium. First, the latter option was seen as an undesirable attempt at approximating legal procedures, which would require the WTI to act *as if* it had the legal power to prosecute or the enforcement power to execute its findings. In that case, the WTI would more readily be seen as a "mock tribunal," it was thought, which was a situation that the organizers wished to avoid.

Second, and perhaps more importantly, in the concept of "the advocate" was found the rudiments of a language that would allow a different sense of political subjectivity to emerge, which might transgress the usual architecture of the court form. It was thought that, in a larger sense, the concept of "advocate" would enable the designation of any person who publicly supports a political cause. Partly by design, partly by chance—but by and large because the organizers were not invested in the distinction—the category of "witness" too dissolved into that of "advocate" in the WTI's Istanbul session. Unable to formulate a set of consistent criteria for distinguishing "advocate" testimonies to the WTI from those by "witnesses," the Contents Committee of the Istanbul session ended up designating (rather arbitrarily for the printed program) only a handful speakers as witnesses. In effect, all "witnesses" in Istanbul were "advocates" and vice versa.

As for "the defense," a table placed off the main stage in front of the audience and the Jury of Conscience was symbolically left empty—with the bilingual placard "Defense/Savunma" standing on the table—throughout the three days of proceedings. In Istanbul, organizers debated but decided against the idea of incorporating a defense counsel into the tribunal's procedure. They appeared to agree with how Arundhati Roy had responded in her opening speech to accusations that without the defense, the WTI would be a "kangaroo court": "Now this view seems to suggest a touching concern that in this harsh world, the views of the U.S. government and the so-called Coalition of the Willing headed by President George Bush and Prime Minister Tony Blair

have somehow gone unrepresented. That the World Tribunal on Iraq isn't aware of the arguments in support of the war and is unwilling to consider the point of view of the invaders. If in the era of the multinational corporate media and embedded journalism anybody can seriously hold this view, then we truly do live in the Age of Irony, in an age when satire has become meaningless because real life is more satirical than satire can ever be."[25] One idea for the performance of defense—which was eventually not practiced—was the proposition that intellectuals, journalists, and academics who had supported the war would be asked to attend the WTI to substantiate their positions. But who would accept this kind of invitation? Alternatively, another idea was entertained that their writings could be read out loud as "the defense," but activists decided against this proposal as well. Instead, it was left up to the Panel of Advocates and the witnesses to address—and dispute—arguments defending the war in their own contributions, which they did to sobering effect.

After all, as Richard Falk would observe in the *Nation* shortly after the conclusion of the Istanbul session, the World Tribunal on Iraq "proceed[ed] from a presumption that the allegations of illegality and criminality [were] valid and that its job [was] to reinforce that conclusion as persuasively and vividly as possible. The motivations of citizens to organize such a tribunal do not arise from uncertainty about issues of legality or morality but from a conviction that the official institutions of the state, including the UN, have failed to act to protect a vulnerable people against such Nuremberg crimes as aggression, violations of the laws of war and crimes against humanity."[26] The lack of a defense council at the WTI's culminating session reflected this "presumption" of illegality and immorality on the part of the United States, the United Kingdom, and their allies in the occupation of Iraq. Such a presumption would be less shocking to liberal sensibilities, were it to be considered that official institutions of international criminal law—such as the International Criminal Tribunal for Rwanda—also proceed from, are in fact founded upon, a certain presumption of guilt. Moreover, the case of the Iraqi High Tribunal set up by the United States in the aftermath of Iraq's invasion (discussed later in this chapter) was not an exception to, but an example of, such an official presumption.

Nevertheless, President George W. Bush and Prime Minister Anthony Blair were "summoned" to the WTI's final session in Istanbul to defend themselves. This idea had come about in the third and last global coordination meeting of the WTI that took place in Istanbul on March 18–20, 2005, where participants from local hearings had come together to plan the final session.

As summarized in the minutes of this global coordination meeting, it was decided: "the work before the [Istanbul] session needs to create an 'expectation' towards the culminating session of the WTI. For example, as a tactic, if all the WTI sessions all over the world go to the US embassies in their city (country) to hand in a 'convocation' to the WTI session in Istanbul, at a common date and time to be agreed on by all, then this will draw the attention of world media and underline that WTI is a global network." As argued by the WTI's "media coordination team," from the perspective of those in positions of power, the mere claim that one constituted a global network was not sufficient: the network as such had to be demonstrated in action.

The best way to achieve this demonstration was a geographically expansive, coordinated, and simultaneous action that would reveal the nodes of the network in practice. Since the US and UK governments provided their own networked locations in the form of consulates and embassies, it was not difficult to identify the proper addresses to deliver the "summons" to the WTI in Istanbul. Moreover, the act of addressing two nation-states as a tribunal constituted by citizens around the world was found symbolically meaningful, asserting the World Tribunal on Iraq as a legitimate host (if not *hostis*) worthy of recognition.

The idea of summoning Bush and Blair to the WTI's final session was put into action on May 17, 2005. As a WTI press release entitled "Bush and Blair Called to Justice at Different Embassies Around the World" announced on that day:

> 17 May 2005, Istanbul, Brussels, Tokyo, Lisbon—At various embassies around the world today, representatives of the World Tribunal on Iraq (WTI) delivered law summons and letters inviting US President Bush and UK Prime Minister Blair to the culminating session of the World Tribunal on Iraq to be held in Istanbul between 23–27 June. The letter of invitation was signed by leading international figures including Denis Halliday, Richard Falk. . . . In addition, letters were also sent by post in New York, Stockholm and Amsterdam to the US and UK officials. In front of the US consulate in Istanbul today, Mrs. Hilal Küey, the spokesperson for the WTI in Turkey said "Since the US administration does not recognize the International Criminal Court, and the UK government has used its power to avoid being prosecuted for an illegal and illegitimate war, the citizens of the world have undertaken an initiative to reclaim justice. The world is calling for Bush and Blair

> to be held accountable for the crimes committed in Iraq." . . . "We ask Mr. Bush and Mr. Blair to present their case in front of the jury of conscience in Istanbul. We believe that the Istanbul hearing bears the responsibility of culminating a process already initiated, and initiating a process yet to be imagined," concluded Mrs. Kuey.[27]

In fact, on the morning of May 17, 2005, on a bright spring day, about ten WTI organizers stood dressed to impress in formal attire for their performance in front of the castle-like structure on top of a hill that is the US consulate in Istanbul.[28] Armed with the turquoise folders bearing the WTI's Istanbul logo (designed and printed through donated labor), they had already rehearsed multiple scenarios—being uncertain how the US consulate's security forces or the Turkish police would react to their attempted "convocation." In front of the US consulate, the presence of an ample number of journalists with their TV cameras was already a positive indication that there would not be much trouble.

Half an hour after notifying the staff at the US consulate's checkpoint of their wish to speak with an official, WTI organizers were ready to read a statement to the press while their spokesperson, attorney Hilal Küey, had already been circled by the cameras. At that moment, however, the only scenario not entertained seriously beforehand realized itself. An official came out of the US consulate and declared that she would accept the letter of invitation to the tribunal and that she wished to speak with the WTI's spokesperson. The team of WTI activists—as well as the media in attendance—were so caught off guard by this possibility that it took several seconds to comprehend what was happening and for the cameras to turn to the consulate's door where the US official stood. The brief encounter between the WTI spokesperson, Hilal Küey (who was not fluent in English), and the US official terminated when the latter took the letter of invitation to the WTI and said she would "assure it reache[d] concerned parties."

One of the Turkish daily newspapers that reported on the WTI's serving of a summons at the US consulate in Istanbul carried the news on its front page, yet, in a telling slip of the pen, misnamed the WTI in print.[29] In Turkish, the correct name is "Irak Dünya Mahkemesi." Using the name properly several times, the same article also referred to the World Tribunal on Iraq as "Irak Devlet Mahkemesi." The slip between *Dünya* (World) and *Devlet* (State), making of the WTI a "state" tribunal, was found entertaining by the organizers, who jokingly asserted that the tribunal's new name constituted evidence of its

Figure 3. Attorney Hilal Küey shaking hands, as a spokesperson of WTI-Istanbul, with a US consulate officer, who holds an enveloped summons to the WTI in her hands, Istanbul, May 17, 2004. Photo by the author.

recognition by the United States. Yet, the table of the defense would remain empty in front of the Jury of Conscience in Istanbul, as no official of the United States or the United Kingdom was ever deployed to fulfill this function.

The first day of the WTI in Istanbul addressed actors who held responsibility for the war on Iraq and was divided into three different sessions. The initial session was "The Role of International Law and Institutions." Beyond the illegality of the war and the criminality of coalition forces' conduct during the occupation of Iraq, the opening session of the tribunal aimed to provide a critique of international law and institutions. In the program booklet of the Istanbul session, a statement by WTI activists asserted: "The demand for justice and the impulse to reclaim justice that find expression through the WTI is not only a matter of determining whether international law has been violated and declaring the perpetrators guilty. At a time when law, entrusted to international institutions that are confined by the vicious circles of inter-state politics is trampled in the name of 'security,' the WTI effort also involves a demand for justice that seeks genuine security in solidarity of hopes and suffering."[30] In this spirit, whereas the first advocate, attorney Phil Shiner—part of the "legal inquiry" in London discussed earlier in this chapter—made a case

Figure 4. Attorney Hilal Küey, as a spokesperson of WTI-Istanbul, speaks to the media in front of the US consulate's eagle emblem in Istanbul, May 17, 2004. Photo by the author.

concerning the illegality of preventive war, other testimonies took issue with international institutions of legality as such. In his testimony, Hans Von Sponeck passionately condemned the organization of which he was the former assistant secretary general—namely the United Nations—for its "monumental failure" and "betrayal" of the Iraqi people and what he called "international conscience." In this session as well, professors Jim Harding, Amy Bartholomew, and Issa Shivji addressed, respectively, the institutionalization of the doctrine of humanitarian intervention, "human rights as swords of empire," and the colonial history of international law (to be discussed in Chapter 4).

An academic and WTI activist from New York City, Anthony Alessandrini, concluded the first session by protesting that he was charged by the tribunal organizers with "an impossible task: namely, acting as an advocate for the global anti-war movement." The WTI organizers in Istanbul, taking their cue from the tribunal's May 2004 session in New York City, had wished to register a basic distinction between the domains of legality and legitimacy during the proceedings of the final session. The organizers wished to demonstrate that the war on Iraq was not only illegal, but also illegitimate. One way

Figure 5. WTI-Istanbul poster, "Come Occupier, Give Account," June 2005. Political poster in public domain.

to articulate this distinction was to posit the existence—beyond norms and rules congealed as "international law"—of a distinct *nomos* or normative order actively constituted by social movements themselves.

Accordingly, noting he might be considered as much a "witness" as an "advocate," Alessandrini addressed the WTI's Jury of Conscience:

> One of the claims that I will ask you to consider is that through its opposition to the war on Iraq, beginning with the unprecedented global demonstrations of February 15, 2003, the global anti-war movement has in fact constituted itself as an international institution, in a very particular sense of the term. For on that date, one month before the commencement of the attack on Iraq by the US government and allies, this global movement, which is in fact multi-vocal, multilingual, and in every way multifarious, spoke with a single voice. Millions of people throughout the world, representing the goals and interests of millions of people more, spoke together, and in the hundreds of different languages that were heard that day, the anti-war movement constituted itself as an international institution designed to state a single word: "NO." No to war, no to occupation, no to injustice, no to the proposed attack on Iraq.[31]

It was this collective rejection of the impending war by the global antiwar movement, Alessandrini argued, that was negated by the United States and its allies in their decision to nonetheless pursue a war against Iraq. Alessandrini made the case that this negation, or "the violation of the will of the global anti-war movement," had to be *categorically* considered a crime against peace. Legally speaking, a "crime against peace" designates the launching of a war in violation of *jus ad bellum*—rules that govern the justice of war. But beyond what the law books consider constitutive of this crime, Alessandrini asserted the manifestation of a global collective will against war as a criterion, if only negatively, for establishing the justice of war. In this way, he made the creative argument that the US-led war on Iraq violated not merely existing international law, but also the principles of legitimacy enacted by movements that had mobilized against it.

The first day's second session addressed "The Responsibility of Governments," responsibility both of official members of the Coalition of the Willing and of unofficial enablers of the war such as the Turkish government, which had allowed the United States to use its airspace and military bases during the

war and occupation. The Turkish case was exposed by Professor Baskın Oran of Ankara University, while Khaled Fahmy of New York University considered the "Responsibility of Arab Governments in the War."[32] Professor Guglielmo Carchedi's testimony concerned the specific responsibility of European governments, and Professor Walden Bello from the Philippines addressed the responsibility of the Coalition of the Willing, which, at its height in March 2004, included some fifty member states. At the end of each session throughout the tribunal, the Jury of Conscience raised probing questions for the advocates, while the audience too could submit their questions to the jury in written form, which were then read out loud. This possibility endowed the tribunal with a dialogic structure as the audience could participate in the proceedings in however limited a fashion.

The last session of the first day turned to the responsibility and accountability of the media. Testimonies discussed the political economy of mainstream media, specific media wrongs during the war and the occupation of Iraq, and the grounds for holding the media responsible. One of the advocates was a Turkish journalist, Ömer Madra, who addressed "The Quest for an Alternative Media." Enacting in practice what he had testified to in theory, the independent radio station that Madra co-founded—Açik/Open Radio—established a studio in the Imperial Mint and broadcasted the proceedings of the WTI live for three days. Furthermore, the WTI's own communications team published a daily newspaper throughout the Istanbul session, the *Chronicle*, in Turkish and English editions, which featured interviews with tribunal participants, announcements, and original cartoons based on testimonies given before the tribunal.

The second day of the Istanbul session was saturated in an altogether different sensibility, as participants provided eyewitness accounts that revealed the "details" of the invasion and occupation of Iraq. Dahr Jamail, an independent journalist from the United States whose unembedded reporting from Iraq had acquired worldwide readership in the antiwar movement, as well as many witnesses from Iraq—Eman Khammas, Hana Ibrahim, Mohammed al-Rahoo, Fadhil al-Bedrani, and Rana Mustafa, among others—testified on the second day. They reported on the ruin of daily life in Iraq, manifestations of gender-based violence, the disappearance of thousands of individuals, house-raids, detentions and prison conditions, the use of chemical weapons, cases of collective punishment, and the siege of Fallujah. They offered the tribunal terrifying stories, photographs, and video footage of countless human rights violations committed by the occupation forces in Iraq.

Especially unsettling for the audience was the testimony of Amal Sawadi, a lawyer from Iraq who was, at the time, defending the rights of Iraqis arbitrarily detained by the American military. In remarkably calm demeanor, she described how "the occupation forces [showed] a great disrespect towards Islam": "A conveyer belt is used, similar to the ones seen in airports that are used for transporting luggage. The detainees, especially the religious scholars and imams, are placed on them and their backs are hit severely to break specific vertebrae; as a result the detainees then pass out. Occupation doctors then 'treat' them. The clergy are urinated on and buried in holes in the ground with only their heads above the ground. Then their heads are spat on and kicked. Women soldiers sexually abuse the detainees, too."[33]

Another damning testimony provided before the tribunal was by Fadhil al-Bedrani from Iraq, who was at the time a correspondent for Al Jazeera and a reporter for Reuters. Al-Bedrani was in Fallujah during the city's deadly siege by American forces: "On 25 November [2004], fifteen American soldiers entered a house at Bathara area, central Fallujah. Three civilian men were there: one was handicapped, the second one was 61 years old, and the third was 52 years old. The only one who survived said, 'When the Americans entered the house they saw that we were sitting unarmed; fourteen left and the last one threw us a grenade saying "Bye." Two were seriously wounded. I with my slight wounds tried to help them but after a while the soldiers were back; I pretended to be dead while the other two were suffering. They put a bullet in every head and left.' "[34] On the second day of the tribunal, these testimonies and other eyewitness accounts depicting daily scenes of humiliation and violence exercised by the occupation forces caused some audience members to weep in silence or to leave the tribunal hall altogether. While organizers of the WTI had warned the audience that children should be taken out of the tribunal hall on that day, it was not only the young, but also the mature who had difficulties in experiencing the testimonies delivered before the WTI.

The fourth session of the second day continued with researched presentations on the economic colonization of Iraq, "the transfer of sovereignty," constitutional change under the occupation, the privatization of war, and the conditions of life constituting—in the words of Nermin al-Mufti, former co-director of the Occupation Watch Center in Baghdad—all of Iraq as a prison.[35] In this session, especially unnerving was the case presented by Barbara Olshansky of the Center for Constitutional Rights based in the United States. Her voice shaking throughout her testimony, "in shame" she called it, Olshansky spoke about the US government's covert practices in the War on Terror,

the predicament of "enemy combatants," and her personal experiences with prisoners held captive at Guantánamo Bay Prison.

Around noon on the second day, as a young US soldier who had participated in the war, Tim Goodrich, was giving testimony on the US Army's conduct in Iraq, unexpectedly, some Iraqi participants, with the help of others, brought a heavy, seventy-five-foot banner into the tribunal hall. The banner, consisting of horrifying pictures of the dead and the wounded in Iraq—montaged and framed within a roll of film negative—shocked the audience to arise in a spontaneous minute of absolute silence. As the cameras stepped out of their designated area in the back of the hall in a rush, and journalists lit up the long banner now exposed in front of the tribunal's stage with their flashes, the graphic images had already made some in the audience sob out loud.

A number of organizers of the Istanbul session had been shown this banner ahead of time and had refused its exhibition during the tribunal. Given their ambivalence toward its graphic content—and their refusal to present what they called "war pornography"—they also banned the banner from the WTI exhibition that was taking place on the grounds of the Imperial Mint. The exhibition featured artwork, posters, and banners produced through various WTI sessions around the world, and also included the work of two Iraqi artists invited to the tribunal in person. Yet, many participants from Iraq, as well as some organizers from various WTI sessions, had insisted that the banner be displayed—for, as one Iraqi participant had said forcefully, "this *is* our reality." It was a strange moment indeed for the organizers from Istanbul, and the American soldier testifying, when the banner was carried into the proceedings anyway—in interruption and perhaps in protest.

The third day of the tribunal, still under the sobering effect of the previous day, was to address "The Impact of the War for the Future of Our World." Its basic concept was consistent with the overall political framework of the WTI, namely, that the war on Iraq presented a violation from the perspective of *humanity*. Thus, the fifth session addressed the destruction of "Cultural Heritage, Environment and World Resources," defined as belonging not only to Iraq, but to the world at large. Similarly, presentations in the sixth and last session of the WTI by professors Nadje Al-Ali, Christine Chinkin, Samir Amin, Biju Mathew, and others went beyond the specificity of Iraq's occupation to address "Global Security Environment and Future Alternatives." From a global perspective, they provided testimonies on militarism and the culture of violence, gender and war, racism and intolerance, the global economy of militarization, the polarization and narrowing scope of political

Figure 6. A small piece of the seventy-five-foot banner carried into the proceedings, WTI-Istanbul, June 2005. Photo by a friend of the author.

alternatives, "human security," and proposals for new political imaginaries and alternatives.

The ultimate testimony before the closing statements by Arundhati Roy and Richard Falk was a collective one delivered by the Contents Committee of the WTI's Istanbul session, which consisted of five women, including myself. The title of this testimony was "The WTI: An Experimental Assertion." In the words of Ayşe Berktay, member of the Contents Committee, while the WTI's "work as a whole is the outcome of the non-hierarchical, collective work of thousands of people from all over the world and hundreds from Turkey," within the proceedings proper, the Contents Committee of the Istanbul session had "wanted to submit the process of the World Tribunal on Iraq for the evaluation of the jury."[36] To this end, members of the Contents Committee adumbrated debates about the WTI's own sources of legitimacy at its founding meeting (analyzed in Chapter 1) and reflected on the diversity of political perspectives that the tribunal network brought together on questions of international law and institutions.

This testimony aimed to present for collective judgment the conduct and "spirit" of the WTI itself:

> What we are doing is directly concerned with the act of reclaiming justice. At this point, we do not solely turn to superior authorities for a judgment and action pertaining to justice. We believe we have the power and authority to do this. . . . They violated everything so flagrantly; they assaulted our futures so blatantly, and they continued their mean ways despite such global opposition from divergent groups and sectors that it was impossible not to rise up in protest. It was, in fact, this naked injustice, and outrageous violence that gathered together jurists and people who shrink back at the world "tribunal," and whose relationship with the "laws" consisted solely of appearing before courts on the occasion of breaking various laws. . . . Our network grew in a surprisingly rapid manner. Underlying the speed with which the idea of calling criminals to account grew, was our confidence in our ability to evaluate and act as active subjects in reclaiming justice on the basis of this evaluation.[37]

From the perspective of an accredited court, the submission of a tribunal for the evaluation of its jury would be subversive at best: to ask a jury to judge the very justice of a tribunal is officially unthinkable. With such a submission, however, while voluntarily presenting themselves for the judgment of the jury and the audience, WTI organizers made the extraordinary attempt to deconstruct their own effort to reclaim justice as an integral part of the tribunal's proceedings.

As the collective presentation of the WTI's Contents Committee ended amid images of global protests on February 15, 2003, projected on two large screens, unheard was the sound recording of antiwar chants emanating from the loud speakers—which the organizers had hoped would energize the audience after days of dismal testimony. Instead, the audience, now numbering a thousand people who had packed the hall beyond limits, unexpectedly broke its silence and stood up with a roaring, if also heartbroken, applause.

Richard Falk took the stage next to deliver his closing speech on behalf of the Panel of Advocates. He expressed his hope "that the judgment of this tribunal [would] help restore the authority of international law as a vehicle for global justice and as an instrument of truth telling."[38] More ambivalently, however, the Declaration of the Jury of Conscience—written over that night at the Armada Hotel neighboring the Imperial Mint—would find: "Established international political-legal mechanisms have failed to prevent this attack [on

Iraq] and to hold the perpetrators accountable. The impunity that the US government and its allies enjoy has created a serious international crisis that questions the import and significance of international law, of human rights covenants, and of the ability of international institutions including the United Nations to address the crisis with any degree of authority or dignity."[39] Instead of affirming the authority of international law as a vehicle for global justice as Falk had pleaded, with this formulation in its Declaration, the WTI's Jury of Conscience in Istanbul decided to *challenge* the authority of international law and its institutions.

After Professor Falk's closing speech, which addressed the tribunal's jury, the jury itself had the last word at the tribunal. Arundhati Roy gave a moving closing speech on behalf of the Jury of Conscience, in which she addressed the WTI's legitimacy: "I don't think in legal or bureaucratic terms. I didn't really go down the road of questioning who we are or who we represent, because to me it's a bit like somebody asking me whether I had the legitimacy to write a novel. I mean, we're just a group of human beings, whether we are five or ten or fifteen or ten million. Surely, we have the right to express our opinion, and surely, if that opinion is irrelevant, surely, if that opinion is full of false facts, surely, if that opinion is absurd, it will be treated as such, and if that opinion is, in fact, representative of the opinions of millions of people, it will become very huge."[40] And in a remarkable move that would seek to turn the exception into the norm, Roy continued with the assertion: "To ask us why we are doing this, why there is a World Tribunal on Iraq, is like asking someone who stops at the site of an accident where people are dying on the road: Why did you stop? Why didn't you keep walking like everybody else?"

Of course, the war on Iraq was no accident but a "crime of aggression" as the WTI's Jury of Conscience would declare in the language of law at its press conference the next day. When faced with such a violent offense, Roy appeared to inquire, how sensible was it to ask people to justify themselves, people who had come together to defend what they valued and loved? Having embodied for two years the sweaty labor of activists from three generations, the World Tribunal on Iraq came to an end with this question, reminding one that even if "the people" do not always win, there are, nevertheless, more or less beautiful ways to lose.

Baghdad

While the World Tribunal on Iraq was being constituted from 2003 to 2005, the US Department of State was busy establishing its own tribunal on Iraq. It was as a result of this tribunal that in Bagdad, early in the morning of December 30, 2006—amid the pandemonium of screaming state officials and masked executioners—President Saddam Hussein was executed in a messy hanging, which audibly broke his neck, for having committed crimes against humanity. Whereas Hussein's execution was condemned widely for "its sectarian tones and disorderly implementation,"[41] and on account of abolitionist principles against the death penalty, the court that sentenced him to death—the Iraqi High Tribunal—did not become the subject of rigorous public debate. Both the antiwar movement in the United States and the so-called "NGO community" were virtually silent on the legitimacy of the IHT's sovereign decision over Hussein's life, even when it was clear from the beginning that the United States had set up this court as a "special" tribunal under its authority as the occupying power.[42]

The only trouble that notable human rights groups perceived in this situation was that the United States "had little appetite for anything other than an all-Iraqi court."[43] While few appeared to doubt that those responsible for "human rights abuses in Iraq must be brought to justice,"[44] many influential NGOs including Amnesty International and Human Rights Watch (HRW) had been campaigning for years to see the day Hussein would face a tribunal for "genocide" and crimes against humanity.[45] The silence of these NGOs on the legitimacy of the IHT and their scramble over the tribunal's "internationality" are nevertheless telling. Once the United States had its way, and the tribunal was set up behind a clumsily managed appearance of an "Iraqi-led" process, the critique of organizations such as HRW was restricted by a legalist formalism limited to procedural concerns.

"It goes without saying Saddam's trial is going to be one of the most important trials of the last hundred years, including Eichmann," Paul D. Wolfowitz, then US deputy secretary of defense, was reported to have said in June 2004.[46] Similarly, for HRW, which was engaged in "consultations" with the US administration over the proper design of the IHT, the importance of this tribunal was incontestable: "The significance of the trials before the IHT is difficult to overstate. For the first time since the post-Second World War Nuremberg trials, almost the entire senior leadership cadre of a long-lived repressive government faces trial for gross human rights violations committed

during their tenure. At stake is not only justice for hundred thousands of victims, but as at Nuremberg, the historical record itself."[47] By placing the trial of Saddam Hussein and other officials of the Ba'th Party in an undifferentiated seriality along with the Nuremberg and Eichmann trials, HRW, like Paul Wolfowitz, asserted the regime's uncontestable "criminal" or "rogue" status. More specifically, in the words of HRW, "the scale of human rights violations in Iraq under the Ba'thist government was so serious that they reached the level of international crimes such as genocide, crimes against humanity, and war crimes."[48] And as HRW assured the readers of its ninety-two-page report on the first trial before the Iraqi High Tribunal, it had "strongly urged over many years the investigation and prosecution of the now-deposed Ba'thist regime" and as such, had "closely followed the development of the IHT since before and through its creation."[49] How then did Human Rights Watch evaluate this tribunal?

Remarkably, the situation that led to a "now-deposed Ba'thist regime" and enabled the tribunal in the first place—namely the invasion of Iraq—does not figure into HRW's evaluation of the IHT. Before proceeding to discuss the jurisdiction of the IHT, in the first two sentences of the background section of the report, HRW "neutrally" observes that: "Between December 2003 and October 2005 the Iraqi High Tribunal was known as the Iraqi Special Tribunal (IST). The IST Statute was promulgated as an Order of the CPA [Coalition Provisional Authority] on December 10, 2003. In early August 2005 the IST Statute was revoked by Iraq's Transitional National Assembly, and replaced by an amended statute that renamed the Special Tribunal as the High Tribunal."[50] Whereas a renamed and "amended" tribunal statute was published in the Official Gazette of the Republic of Iraq on October 18, 2005—only a day before the initiation of the actual trial—the original statute of the Iraqi Special Tribunal (seemingly left intact except for its name and the criteria for judges' dismissal) was a *decree* signed by the Coalition Provisional Authority (CPA) administrator for the United States, Paul Bremer III, and published in the CPA's Official Gazette in December 2003.

In other words, regardless of its ex post facto reinstitution under a "transitional national assembly," the IHT was originally established as "an official institution of the occupying power"[51] and under the authority and sovereignty exercised by it. Despite its apparent normalization by a national assembly that itself was transitional and whose legitimacy was contested throughout Iraq, the IHT was indeed "special" and exceptional, a new institution created by the occupying powers beside and outside the existing Iraqi judiciary (or what

remained of it). Yet as such and still, it was to be an "Iraqi" court to try Saddam Hussein for crimes against humanity.

Coupled with its plans for regime change in Iraq, as early as 2002 the US Department of State had included the establishment of an ad hoc tribunal as an explicit component of its "Future of Iraq" project.[52] By January 2003, a group of international law experts participating in the "Working Group on Transitional Justice" under the Future of Iraq project of the State Department had already prepared, before the beginning of the war, "a comprehensive post-conflict justice plan" for Iraq.[53] This plan, as well as the later alternatives considered by the Bush administration, consisted of three options: (1) an international tribunal established by the Security Council similar to the ad hoc international criminal tribunals for the former Yugoslavia and Rwanda, (2) a mixed international and national tribunal similar to the one established in Sierra Leone, or (3) a national Iraqi tribunal with some international support.[54] Whereas the Bush administration had reportedly been opposed to the idea of an international tribunal from the beginning,[55] "the NGO community"—including the executive director of HRW, Kenneth Roth, who had met with then National Security Advisor Condoleezza Rice as early as June 11, 2003, in the White House, long before the existence of any "transitional national assembly" in Iraq—had favored the first two options.[56]

HRW's unheeded preference for an international tribunal is quite evident in its report, *Judging Dujail*, which addresses the first trial before the Iraqi High Tribunal, which resulted in Saddam Hussein's execution. Despite the establishment of the IHT as a national court "explicitly built on the preexisting foundation of domestic law,"[57] the HRW report bases its major critique of the tribunal on a procedural conception of legitimacy that unquestionably has as its kernel international criminal law: "Crimes such as genocide and crimes against humanity achieved recognition as crimes through international law; the legitimacy of trying them is thus inextricably linked to whether the trial meets international fair trial standards and correctly applies substantive international criminal law."[58] Given this predication of legitimacy, and a deafening silence on the condition of possibility of the IHT—namely, the occupation of Iraq—HRW then comfortably quoted as evidence a US Department of State *Quarterly Update to Congress*[59] to establish in turn "the reality" that Iraq lacked "the professional and technical investigative and judicial expertise" to prosecute crimes against humanity "on its own."[60]

Regarding the performance of the IHT, Human Rights Watch reported, "the picture that emerges from research is of an institution struggling with all

aspects of conducting these legally and factually complicated trials," coupled with this plaintive conclusion:

> The level of legal and practical expertise of the key Iraqi actors in the court—trial judges, administrators, prosecutors, and defense lawyers—is not sufficient to fairly and effectively try crimes of this magnitude. In addition, while non-Iraqi advisors provided by the US Embassy have been indispensable to the day-to-day functioning of the court, they have proved a poor substitute for the direct participation of international judges, counsel, and managers in the court. In the last instance, it appears that "advisors" can advise, but cannot actively participate to ensure that essential international standards are met.[61]

Here, in a fashion repeated throughout its evaluative report, HRW constructed a stark contrast between the magnitude and complexity of an international crime that required "international expertise" on the one hand, and a merely national Iraqi court on the other, which manifested a "lack of capacity" and, as stated in the report's conclusions, "a basic lack of understanding of fair trial principles and how to uphold them in the conduct of a relatively complex trial."[62]

Apparently not lacking this basic understanding of fair trial principles pertaining to the "Iraqi actors" were the international advisors themselves. As HRW admitted in its report, however, the US embassy establishment, Regime Crimes Liaison Office (RCLO), "was the only source of international advisors"[63] at the Iraqi High Tribunal. Further, the character of the RCLO's "indispensable" participation in the IHT exceeded a role of mere support: "quarterly reports to [the US] Congress make it clear that that the RCLO's staff of over 50 have played a leading role in all aspects of the IST."[64]

Ironically, despite HRW's exclusive faulting of "Iraqi actors" for the flaws of the tribunal, the latter's function was limited to a performative role in the courtroom itself. In fact, it was the US administration that had prepared both the evidence base and the strategy of the case to be brought against Saddam Hussein:

> In early March [2004], the Justice Department appointed the first Regime Crimes Liaison—Gregory W. Kehoe, a trial lawyer from Tampa, Fla., who had been a prosecutor for the War Crimes Tribunal at the Hague—to assist with the collection of evidence and the prosecution strategy. The way the administration puts it, American participation in the Iraqi Special Tribunal is designed to be pyramidal: greatest at

> the base, the investigatory stage—the collection of witness testimony and documents, the exhumations of massacre sites—at which the Iraqis have little or no experience. Kehoe's teams plan to disperse throughout the country and bring the evidence back to the special tribunal's headquarters in Baghdad. Kehoe's investigators are preparing a "command responsibility" case against Hussein, under which he, as the former leader of the government, can be held accountable for genocide, war crimes and crimes against humanity committed during his tenure, even if he never personally killed, gassed or massacred.[65]

Thus, the evidence that was "found" by the American forces was handed up the tribunal pyramid whereby—as asserted by US Ambassador-At-Large for War Crimes Issues Pierre-Richard Prosper—"higher up, into the court process, it becomes more and more Iraqi," such that "by the time you're actually in the courtroom, at the tip of the pyramid, it's an Iraqi-led process."[66]

Curiously, the principal author of the HRW report in question readily admits elsewhere "the undeniably substantial American role in the tribunal" and maintains that "at the level of practical reality, the claim that the IST represents an 'Iraqi-led' process is tenuous."[67] How then to understand the virtual *absence* of the name of the United States in the Human Rights Watch report on the trial of Saddam Hussein? What kind of human rights politics does this absence register? In *Poisoned Chalice*, the subsequent HRW report evaluating the decision of the IHT, the ultimate conclusion is that "both the trial and the decision itself reflect the wholly inadequate international legal expertise of the IHT judges and lawyers." [68] Just this lack of expertise is asserted as the principal reason that "calls into question [IHT's] credibility as a judicial institution."[69] Thus, not the fact that the tribunal was set up by the occupying powers in a classic act of "victors' justice," [70] nor that it could barely take place amid assassinations, resignations and dismissals of lawyers and judges, but that "the Iraqis" lacked expertise in international law is asserted as the reason why Human Rights Watch questions the credibility of the IHT.

Since the trial of Eichmann in Jerusalem, followed by the tribunals on the former Yugoslavia, Rwanda, and the establishment of the International Criminal Court, the concept of "crimes against humanity" has acquired commonsensical status.[71] While this may be one reason for the poverty of the legal and political debate about Hussein's trial for crimes against humanity—even as Hussein's defense strategy was to question the legitimacy of the IHT to sit in judgment over his life—it remains the case that the United States did not make

an extended effort to justify the tribunal it itself constituted.[72] The US administration simply asserted an Iraqi right to sit in judgment over Hussein's life, in an "all-Iraqi" process. Thus, paradoxically, besides the notion of crimes against humanity, yet another seemingly commonsensical judgment facilitated the tribunal's smooth reception: the decision to mobilize a *national* "Iraqi right to sit in judgment." While this decision by the United States was resented by NGOs invested in the internationalization of transitional justice processes, which they interpreted as a step back from developments in international criminal law, it allowed the United States to shed all responsibility for the performance of the IHT.[73] Whichever flaw the tribunal was charged with could be dismissed as the fault of "the Iraqis" and their ways of doing justice.

The NGO establishment, including Amnesty International, welcomed the Iraqi High Tribunal "as an important first step" congruent with the "commitment to helping ensure that victims of human rights abuses gain access to justice."[74] Further, Amnesty International insisted, the investigation and prosecution of such abuses were "not solely the responsibility of Iraqi authorities," but constituted international responsibilities of and for the international community.[75] As the jurist Ruti Teitel finds, however, "The 'internationalization' debate potentially takes on another meaning in the context of postconflict situations involving postwar occupation, such as Iraq. To frame the question as a choice between a national and an international tribunal may, in such cases, be misleading. As a political matter, the actual choice may be between an occupation and non-occupation tribunal."[76] In their approving critique of the IHT, however, Amnesty International and HRW ignored this political matter, burying it under discussions of procedural "international standards" and lamentations of inadequate Iraqi expertise and "mastery of contemporary international law principles."[77] In discussing this "special" tribunal as a conventional case of international criminal law and transitional justice—the practice of which, they claimed, required international expertise—they imagined a tribunal that was devoid of a past. Neither the intimate involvement of the United States with the government of Saddam Hussein, nor the 2003 occupation and the human rights violations committed therein; neither the "Iraqiness" of the IHT, nor its legitimacy in the eyes of the Iraqi people—none of this could emerge as credibility problems in their framework of evaluation sketched by the standards of international criminal law and the desire for its "progressive" development.

This predicament, I am led to conclude, is symptomatic of a certain politics of human rights that consistently—and violently—asserts the universal rights and responsibilities of humanity over the particularly constituted rights

and autonomy of a citizenry. Reading the interpretation of the Iraqi High Tribunal by Amnesty International and Human Rights Watch, it is impossible to gain the sense that Saddam Hussein was notified of the charges against him at proceedings that took place at an US military base tellingly named Camp Victory. For these NGOs involved in the business of human rights, if the IHT did not constitute a case of victor's justice initiated at a Camp Victory, then it remains difficult to discern the sense of "justice" articulated from their characteristic standpoint, which perceived instead, in the trial of Hussein, "a unique opportunity to ensure justice" [78] on behalf of humanity. Or, for these NGOs, and the politics of human rights they represent, was *any* tribunal more desirable than *no* tribunal in the post-2003 field? Was a military occupation a justified means to bring Saddam Hussein before the law? Their answer, along with that of the United States, appears to be positive.

Conclusion

In Baghdad, through the Iraqi High Tribunal, an ostensibly national trial resulted in the execution of Saddam Hussein in the name of humanity. While the World Tribunal on Iraq was conducted from the point of view of humanity, a national exception was nonetheless asserted when it came to the case of Saddam Hussein: his crimes were left "up to the Iraqi people" to address. Thus, "the world" could judge the actions of the United States and the United Kingdom, the United Nations and all others, but it could not pass judgment on the actions of Saddam Hussein, over which Iraqis had an exclusive claim. In this way, although it would not accept the legitimacy of the tribunal in Baghdad as an institution of the occupying powers, the World Tribunal on Iraq appeared to be in tacit agreement with the United States about an "Iraqi right to sit in judgment" over Hussein's life.

As I have argued elsewhere, in the trial of Eichmann in Jerusalem, the creation of the State of Israel was a necessary condition for Eichmann's prosecution for crimes against humanity and the enforcement of a punishment—which justified, in the eyes of Hannah Arendt, the illegal kidnapping of Eichmann by forces of the Israeli secret service in Argentina.[79] Similarly, in Baghdad, it was only through the establishment of a new state that a jurisdiction over crimes against humanity could be exercised—which in effect justified, for some human rights NGOs, the occupying forces and their invasion of Iraq ex post facto. While the new state of Iraq—established under a military

occupation—lacked political legitimacy according to many of its own citizens, and while the United States did not observe the preference of the NGO community for an international tribunal, the attraction of the latter to the trial of Saddam Hussein was notable and significant.

How should one evaluate this attraction? Reflecting on the operation of international law in relation to imperialism in the war on Iraq, the legal scholar Antony Anghie finds that "human rights is deployed as both an argument for invasion, and then that invasion having been completed, as an argument for transformation." Human Rights Watch had called for a military intervention in Iraq, in the name of human rights, long before the war in 2003. Further, it was invested in the kind of democratic transformation as well as "transitional justice" promised by the occupying powers. In the case of the war on Iraq, Anghie continues: "The attraction for human rights scholars is considerable, especially given the atrocities committed by Saddam Hussein, because what human rights law notoriously lacked is enforcement. It is in this way, through the invocation of human rights, what might be seen as an illegal project of conquest is transformed into a legal project of salvation and redemption."[80] Once the "unique opportunity" for enforcement appeared, the same attraction that allured human rights scholars seems to have been found irresistible by Amnesty International and Human Rights Watch. What they approvingly perceived in the United States and its allies was, in other words, *the violent capacity to enforce human rights*.

Yet, there was no court with enforcement power, either national or international, that could prosecute the United States and the United Kingdom (hence the occasion for the founding of the WTI), while it was precisely "enforcement power," in the conventional sense, that the World Tribunal on Iraq lacked. The kind of enforcement power that the WTI desired for its judgment, however, was different in nature from that of an official tribunal: the WTI hoped that people and movements around the world would act on its findings and *enact* its judgment. This was, as a WTI organizer from New York would name it, a vision of "enforcement from below." As Arundhati Roy articulated this vision in her opening speech at the WTI in Istanbul, the comprehensive spectrum of evidence and information compiled through the World Tribunal on Iraq could "serve as a weapon in the hands of those who wish to participate in the resistance against the occupation of Iraq. It should become a weapon in the hands of soldiers in the United States, the United Kingdom, Italy, Australia, and elsewhere who do not wish to fight, who do not wish to lay down their lives—or to take the lives of others—for a pack of lies. It should become a

weapon in the hands of journalists, writers, poets, singers, teachers, plumbers, taxi drivers, car mechanics, painters, lawyers—anybody who wishes to participate in the resistance."[81] In the same vein, in its final declaration, the Jury of Conscience in Istanbul called upon movements, organizations, and individuals around the world to engage in acts of civil disobedience and to "resist and reject any effort by any of their governments to provide material, logistic, or moral support to the occupation of Iraq."[82] It was not in the enforcement power of a constituted sovereignty then, but in the capacity for action of a global constituting power that the WTI's judgment could find its implementation.

Last but not least, the proceedings in Baghdad and Istanbul had the form of a tribunal and the language of international law in common. We could remember that a tribunal is an ancient forum for *acting*, and acting not plainly but legally. The WTI partook in this tradition when it constituted itself as a tribunal to judge the war on Iraq in the name of humanity. But must the performance of justice take the form of a tribunal? And does "bringing before justice" have to mean "bringing before the law," whether national or global? The provision of justice attempted both in Jerusalem (vis-à-vis Eichmann) and in Baghdad (vis-à-vis Hussein) clearly had as their origin violence, the two occupations that enabled the performance of these tribunals: the occupation of Palestine and the occupation of Iraq. But do not *all* official tribunals have violence at their origin and are they not all, in a fundamental sense, institutions of "victor's justice"?[83] Efforts to bring one before the law, are they not efforts to bring one before violence?

As Walter Benjamin once observed, "where frontiers are decided the adversary is not simply annihilated; indeed he is accorded rights even when the victor's superiority in power is complete."[84] In keeping with this tradition, in Baghdad, an "enemy of humanity" was accorded rights and annihilated not simply, but legally after a trial. And precisely this has become a way *not* to "shock the conscience of mankind," while the one who is said to have occasioned such a shock is legally executed.

CHAPTER 3

Constituting Constitutions: The Fact of Iraqi Constitution, the Fatalism of Human Rights

Introduction

On August 10, 2005, Amnesty International published "a memorandum outlining its human rights concerns with regard to the draft Iraqi constitution"[1]—the new constitution resulting from the country's occupation—which was scheduled by the United States of America to be submitted to the Transitional National Assembly of Iraq and put to referendum by October 15, 2005. In its memorandum, Amnesty International (AI) described the constitutional process as a "unique opportunity" for Iraq "to draft a Constitution that is inclusive and protects human rights" and asserted that "very few countries today have the chance to go through this process."[2] By chance or curse, the AI memorandum and its concurrent "action"—a global internet petition appealing to the Iraqi prime minister at the time, Mr. Jaafari, "to ensure that the new constitution will reflect, without any ambiguity, all fundamental human rights guarantees"[3]—sparked passionate controversy within the World Tribunal on Iraq (WTI) network.

In particular, the AI appeal claimed, "as it stands right now, women's human rights won't be guaranteed under the constitution," and it urgently called on Prime Minister Jaafari to do his utmost "to ensure that the constitution prohibits unequivocally any forms of discrimination against women, and promotes women's human rights." In conclusion, the petition thanked Jaafari for his "positive contribution to ensure a human rights based constitution."[4]

A human rights–based constitution, established through a violent occu-

pation. "I find this most troublesome. We need to intervene to underline that the occupation itself is the greatest violation of dignity and rights," urged a WTI organizer from Istanbul in an e-mail addressed to the WTI network. The trouble emerged to the extent that the "Iraqi" constitutional process, initiated by a war of aggression found both illegal and illegitimate by the WTI, was itself illegal and illegitimate. Making demands on this constitutional process to respect human rights would thus amount to a politically undesirable recognition and legitimation. "I suggest that we do not focus this discussion on 'discrimination against women' but deal with it in terms of where 'human rights discourse' is going. Can we discuss this? . . . How do we warn about the risks of such policy?" the WTI organizer continued in her brief e-mail.[5]

The ensuing controversy within the WTI network (and similar debates in the global public at large) is emblematic, I suggest, of the antinomies and paradoxes of the politics of human rights today, especially in judging cases of war and occupation for "liberation." I argue that in the constitution of an imperial political order, a politics of human rights that is engaged to delegitimate states and their practices can remain particularly blind to the problem I call *fundamental legitimacy*. Concurrently, the politics of human rights as manifest in the Amnesty International campaign is implicated in and contributes to contemporary processes of imperial legitimation.

Furthermore, the antinomies and paradoxes I examine in this chapter are *intrinsic* to the politics of human rights. As such, they manifest what Étienne Balibar designates as the "duality of interpretations of the democratic constitution of rights," stemming from the antithesis between *fundamental rights* and *constituted rights*.[6] As I argue expanding on Balibar, the antithesis effecting the foundation of democratic rights concerns two conflicting principles constituting constitutions.[7] This conflict of principles was crucial as well for the Amnesty International controversy within the WTI network.

The Fact of Law, or the Law of Fact

Following the initial request for discussing the implications of the Amnesty International action, on September 14, 2005, the B*Russell*s Tribunal (BT)[8] circulated its "Open Letter to Amnesty International on the Iraqi Constitution" within the global WTI network. Noting that its letter was in accord with the declaration of the Jury of Conscience at the WTI's last session in Istanbul,[9] the BT sought the endorsement and "signature" of the larger WTI network, of

which it had been a member since inception. "We don't consider Amnesty our enemy," a BT organizer noted in his e-mail introducing the letter, "but we have to criticize their cooperation with the occupier and the puppet government in calling for a human rights based constitution." Drafted in affable language, the BT's letter to AI still asserted unequivocally:

> The legitimacy and autonomy of this government [of Prime Minister Jaafari in Iraq], installed and completely controlled by the US occupation forces after an illegal and illegitimate war of aggression, is not only challenged by a large part of the Iraqi population, but also by the international peace movement and international lawyers.
>
> The culminating session of the World Tribunal on Iraq that took place in Istanbul June 23–26, 2005, investigated this war of aggression and the crimes committed by the occupying forces. A Jury of Conscience concluded that the invasion was illegal under international law. The subsequent occupation is also considered illegal by the Peace movement. Some excerpts:
>
> 10. Any law or institution created under the aegis of occupation is devoid of both legal and moral authority. The recently concluded election, the Constituent Assembly, the current government, and the drafting committee for the Constitution are therefore all illegitimate.
>
> (. . .) *We recommend:*
>
> 3. That all laws, contracts, treaties, and institutions established under occupation, which the Iraqi people deem inimical to their interests, be considered null and void. (. . .)
>
> 10. That people around the world resist and reject any effort by any of their governments to provide material, logistical, or moral support to the occupation of Iraq.[10]

The BT letter concluded: "With the above in mind, we consider it to be more suitable if Amnesty International would concentrate its efforts on denouncing the grave violations of human rights inflicted upon the Iraqi people . . . instead of starting a campaign that *de facto* gives some legitimization to this inhumane occupation and its quisling government, whose legality is highly questionable." The BT's letter, now presented to the WTI for network endorsement, bore among others the signature of Hans von Sponeck, the former United Nations assistant secretary general and the UN humanitarian coordinator for Iraq from 1998 to 2000.[11]

Yet, the de facto legitimization of the occupation effected by Amnesty International's campaign was considered a "fact of law," or rather a "law of fact," albeit an unfortunate one by some WTI organizers. Not only did they disagree with the BT's letter, they also argued that it should not be submitted to Amnesty International at all. The reasons they offered for differences of judgment presented a difficult case to resolve—at once in theory and practice—while demonstrating the ways in which AI's politics of human rights contribute to contemporary processes of imperial legitimation. "It is a waste of our energy and time to confront an international organization such as Amnesty International that did and continues to do so much for Human Rights in Iraq and elsewhere," wrote a WTI-Istanbul organizer, protesting BT's letter. He accurately asserted, "even if I do not except [*sic*: for *accept*, although the slip sheds some light on the situation] the Iraqi government as a legitimate one, the unfortunate fact is that under international law, the Iraqi government is a legitimate one." Indeed, institutions of international law and nation-states had de facto, if not also de jure, recognized the legitimacy of the new Iraqi government, even as United Nations Secretary General Kofi Annan had declared the war that realized the Iraqi constitutional process to be "illegal."[12] For the case at hand, the WTI-Istanbul organizer thus concluded, "international organizations such as AI and Human Rights Watch or Greenpeace do operate under international law. 'We' may not, but they do."

What was at stake in (not) criticizing Amnesty International, and in (not) declaring the constitution and contracts that were direct consequences of the occupation of Iraq illegitimate? In *The* Nomos *of the Earth*, Carl Schmitt, reflecting on the original sense of *nomos*—often reduced to the word *law* in linguistic and historical renderings—compellingly argued: "All subsequent regulations of a written or unwritten kind derive their power from the inner measure of an original, constitutive act of spatial ordering. This original act is *nomos*. All subsequent developments are either results of and expansions on this act or else redistributions (*anadasmoi*)—either a continuation on the same basis or a disintegration of and departure from the constitutive act of the spatial order established by land-appropriation, the founding of cities, or colonization. . . . Thus, for us, *nomos* is a matter of the fundamental process of apportioning space that is essential to every historical epoch."[13] The occupation of Iraq by forces led by the United States and United Kingdom was just such a constitutive act of spatial ordering, (re)apportioning that surface of the earth formerly fenced in under the name and flag of Iraq. Even as the territorial borders of that surface did not immediately change due to the act of

occupation, there is no keener evidence of the constitutive character of this spatial reordering than the creation of a new Iraqi constitution, currency, and passport. In other words, although the name Iraq remained unchanged, from the institutions of government to the distribution of "ethnic power," from the ousting of a president to the "temporary" apportioning of space specifically under US-UK sovereignty, there took place a revolution in Iraq, one enacted behind the unsubtle banner of regime change.[14] Significantly, whether or not the war on and occupation of Iraq were initially considered illegal, the fact of war and occupation established the law thence ensuing in national and global contexts at once. The occupation was, in this sense, what Gayatri Spivak calls—in the case of the British colonization of India—a constitutive "enabling violation."[15]

It is precisely in reference to the constitutive *is*-factuality of spatial ordering (which may or may not have been "legal" in the sense of the *ought*-norm) that Schmitt insisted, in spite of a "bewildering" modern legal positivism: "In the strictest sense, law is mediation. In its original sense, however, *nomos* is precisely the full immediacy of a legal power not mediated by laws; it is a constitutive historical event—an act of *legitimacy*, whereby the legality of a mere law first is made meaningful."[16] By which "inner measure" can one speak of a "full immediacy of a legal power not mediated by laws"? For Schmitt, this measure is *nomos*, a measure that cannot be subsumed by the (current) concepts of law and "legality"; given the incapacity of the names of law and "legality" to properly signify *nomos*, "the only corrective is the concept of legitimacy that today is rather impotent."[17] For the law that no longer recognizes the inadequation between legality and legitimacy, however—a law that, under the influence of legal positivism, expresses "the metamorphoses of *is* into *ought*, of actuality into law"[18]—the mere enactment of an act as fact, regardless of its original legitimacy or illegitimacy, can become the unfortunate law.

In this predicament resides the fact of law and the law of fact, expressed, mobilized, and apparently lamented by the WTI organizer in his e-mail objecting to the BT's letter to AI, *because* "the unfortunate fact is that under international law, the Iraqi government is a legitimate one." Crucial here is how legitimacy is granted to the "full immediacy of a legal power not mediated by laws"—in the reverse order of what the case is for Schmitt. Whereas legitimacy at once chronologically and normatively precedes legality in the judgment of Schmitt[19]—for whom legitimacy comes *a priori* and *with priority* to legality[20]—according to the WTI-Istanbul organizer's e-mail overwhelmed by

legal positivism, fact begets legality begets legitimacy, a legitimacy established now not only de facto, but ex post facto.[21]

Schmitt's genealogy of the *nomos* of the earth complements his project in *Legality and Legitimacy*, a work he refers to in critical passages ascertaining the meaning of *nomos*.[22] It is important to note moreover that Schmitt, in his early scholarship in general and in *Legality and Legitimacy* (1932) in particular, has been "interpreted as justifying sovereign dictatorial power" in the name of an "extra-legal" legitimacy.[23] However, as political theorist Susan Buck-Morss argues, "the point after all, is not to put Schmitt on trial, but to put on trial those elements of his ideas that will allow us to judge with clarity the present political crisis."[24] It is therefore relevant to observe the diverse ways in which many WTI organizers, like others of the political Left (and Right) past and present, have mobilized, if tacitly, Schmitt's theoretical stance in their judgment of war and occupation in Iraq and elsewhere. In the current context, the mobilization of Schmitt's theoretical position—one that is by no means exclusively his, but was significantly shared, among others, by Walter Benjamin[25]—can be summarized thus: legality cannot subsume legitimacy while legality depends for its own validity on legitimacy proper and prior.

The political consequences of this position, only exceptionally (often in situations of crisis and revolution) developed to full conclusion in theory and practice, cannot be overstated. Among others, these consequences produce a situation in which the position on the primacy of legitimacy vis-à-vis legality—even as it informs Schmitt's exposition of *nomos* rather subtly under the constitutive primacy of *violent* land appropriation—is inextricably bound to the question of violence. The reason for this nexus, perhaps most clear to Walter Benjamin in his "Critique of Violence," is that the originating act of legitimacy that founds legality is most often not just any act, but an act enacted in violence, whereby the lawmaking capacity of violence as such becomes evident.[26]

In the case of the Amnesty International controversy within the World Tribunal on Iraq network, which also involved the question of the originating and lawmaking violence of occupation, nothing short of the political purchase of the primary, constitutive position of legitimacy—as the authority predicating legality—was at stake. And at stake, in contradistinction to a certain legalist politics of human rights that can remain blind to the problem of what I call fundamental legitimacy. If the first position, corresponding to that of Schmitt and the *BRussell*s Tribunal's open letter to AI, can be cautiously named a "politics of legitimacy," the message that objected to the BT's letter (by noting,

"international organizations such as AI and Human Rights Watch or Greenpeace do operate under international law. 'We' may not, but they do") constitutes a sharp contrast, in the limited form of a "politics of legality" that informs mainstream human rights NGOs in their notable difference from many elements of the World Tribunal on Iraq network.

Still, the alarm raised within the global WTI network by Amnesty International's legalist politics of human rights was intimated by the WTI's own constitution: the WTI itself was founded through an act of legitimacy rather than legality and in order to make legitimate (not legal) pronouncements on both the legality and the legitimacy of the war and occupation in Iraq. Thus, when a WTI-Istanbul organizer expressed his difference of judgment by asserting the disjunction between the politics of the WTI and that of AI (namely, that the latter "operates under international law" that granted the occupation of Iraq legality) as the very reason for his objection to "confronting" AI, another WTI participant referred him back to the founding Platform Text of the WTI.[27] Having been active in producing WTI sessions in Brussels and Rome, this participant would object to the WTI-Istanbul organizer's e-mail thus: "I think he did not understand the *very essence* of this initiative and its *political purpose*."[28] "The WTI's goal in the first place, is to question the legality of the invasion, the occupation and all laws and bodies that derive from it, i.e. institutions, governments, treaties, agreements, including this latest constitution," she continued, and forcefully concluded, "I hope he refrains from political intervention before this full understanding." Her contribution was a principled affirmation of the WTI's politics of legitimacy as a challenge to legality, in contrast to the "unique opportunity" and the legal chance that Amnesty International saw in the drafting of a new, possibly "human rights based constitution" in Iraq.

A Constitution, "in force very soon"

"Where 'human rights discourse' is going" was the political question that occupied the author of the message from Istanbul launching this animated debate about Amnesty International in the global World Tribunal on Iraq network. The agonizing discussion, which ranged from the fundamentals of legality to the very process of decision making within the WTI network, would inspire another question: "More importantly, who is our enemy, and what is our vision?" It was perhaps surprising—to those who would expect a

decided consistency in political action—that such an elementary question would be raised at the time of its conclusion. However, as Hannah Arendt wrote about the fundamental condition of politics, namely, "that it goes on among *plural* human beings," matters of practical politics are subject to the agreement of many from inception to conclusion, time and time again.[29] As such, "they can never lie in theoretical considerations or the opinion of one person."[30] Nevertheless, theoretical considerations are often implicitly, and at times explicitly, raised in political action. And the debate on the politics of human rights, impassioned by the BT's open letter to AI, was no exception within the global WTI network. In this context, an organizer of the BT argued: "It is precisely this policy of consensus, and sparing the goat and the cabbage as we say, that makes most NGOs so apolitical. [Neither] Amnesty nor *Médecins Sans Frontières* [Doctors Without Borders] would [ever] . . . support the WTI, for it is too political. But I don't see why we could not criticize their actions. NGOs do good things. They also do bad things. According to Negri they are part of the pyramid of Empire and surely he has a point." Thus cited was Antonio Negri by a founder of the B*Russell*s Tribunal, who had introduced himself as a philosopher at the WTI's founding meeting in Istanbul.

But how can some NGOs, including Amnesty International and *Médecins Sans Frontières* be "so apolitical" on the one hand, and yet "part of the pyramid of Empire"? Antonio Negri and Michael Hardt judge:

> For our argument, and in the context of Empire, we are most interested in a subset of NGOs that strive to represent the least among us, those who cannot represent themselves. . . . Their mandate is not really to further the particular interests of any group but rather to represent directly global and universal human interests. Human rights organizations (such as Amnesty International and Americas Watch) . . . and the medical and famine relief agencies (such as Oxfam and *Médecins Sans Frontières*) all defend human life against torture, starvation, massacre, imprisonment, and political assassination. Their political action rests on a universal moral call—what is at stake is life itself. . . . What [these NGOs] really represent is the vital force that underlies the People, and thus they transform politics into a question of generic life, life in all its generality. These NGOs extend far and wide in the humus of biopower; they are the capillary ends of the contemporary networks of power, or (to return to our general metaphor) they are the broad base

> of the triangle of global power. Here, at this broadest, most universal level, the activities of these NGOs coincide with the workings of Empire "beyond politics," on the terrain of biopower, meeting the needs of life itself.[31]

In the three-tier triangle of global power, according to Hardt and Negri, where the United States occupies the highest tip, NGOs such as Amnesty International belong to the "grassroots" base, "to the third and broadest tier of the pyramid," which "consists of groups that represent popular interests in the global power arrangement," fulfilling "the contestatory and/or legitimating function of popular representation."[32] The operations of these NGOs appear "beyond politics" to the extent that what is directly at stake in their motivations and activities "is the production and reproduction of life itself"[33] (a situation Hardt and Negri, following Michel Foucault, refer to as *biopower*). Humanitarian NGOs legitimate their existence in terms of a necessary, moral, and universal defense of human life as such, wherever and whenever life may be at stake. Herein resides their "apolitical" appearance, as they speak the language of what political theorist Wendy Brown calls the "pragmatist, moral and antipolitical mantle of human rights discourse."[34]

Yet the *effects* of these NGOs are far from apolitical. They are among the most important practitioners of a nongovernmental "moral intervention," which, according to Hardt and Negri has become "a frontline force of imperial intervention."[35] Whether the case is the prevention of massacres in Kosovo or in Libya in the name of "universal human interests," such nongovernmental moral intervention precedes, calls into being, and pre-legitimates imperial military action: "in effect this [moral] intervention prefigures the state of exception [in which imperial intervention is practiced] from below, and does so without borders, armed with some of the most effective means of communication and oriented towards the symbolic construction of the Enemy."[36]

In a similar vein, in the WTI's debate over Amnesty International's politics of human rights, the problem of a prefigurative legitimation of imperial intervention was both stressed and contested by several WTI activists. One BT organizer, for instance, quoted at length an online report that chronicled "the incubator story hoax," which he claimed "led to the Gulf War in 1991."[37] According to this report, immediately before the November 1990 US Congress vote on the first Gulf War in Iraq, Amnesty International "took out full-page newspaper spreads" to publicize a story that months later turned out to be a hoax in which Iraqi troops, having invaded Kuwait, went into a hospital and

"tore the sick babies from incubators and left them on the cold floor to die." As the report further noted, "President Bush mentioned the incubator incident in five of his speeches and seven senators referred to them in speeches backing a pro-war resolution." The political implications of this example were revealed, yet negated in principle, by a WTI participant writing from Wellington, New Zealand: "It is true that AI exposed human rights violations in occupied [by Iraq] Kuwait, but the strength of AI is in its neutrality and its exposure of human rights violations wherever they are committed. . . . In reality, the exposure of human rights violations by AI provides more support for those advocating justice on behalf of the citizens through non-violent means than those who would try to manipulate the information to build support for military action against the violating government." The philosophers (Antonio Negri and the co-founder of the BT) could disagree, and disagree not in solitude, but in multitude. Yet another WTI participant from the United States, as she signed her contribution to the debate, would argue that Amnesty International "should not legitimate Iraq's puppet government by campaigning for women's rights in the new, sham constitution" and instead "should seek to maintain its own legitimacy."

Significantly, if in *Empire*, Hardt and Negri describe the imperial legitimation of violence as achieved primarily prefiguratively, in their sequel, *Multitude*, written after the fact of the Global War on Terror and the occupation of Iraq, they accord a striking difference to mechanisms of legitimation, akin to that manifested by AI's ex post facto legitimation of the invasion of Iraq: "Violence is legitimated most effectively today, it seems to us, not on any a priori framework, moral or legal, but only a posteriori, based on its results . . . [T]he logic of legitimation has more to do with the effects of the violence. The reinforcement or the reestablishment of the current global order is what retroactively legitimates the use of violence. . . . Perhaps it should be no surprise that when war constitutes the basis of politics, the enemy becomes the constitutive function of legitimacy."[38] To the extent that global order was reestablished by subsuming Iraq under a "temporary" US-UK sovereignty, the process named "the transfer of sovereignty" following the occupation was meant to seal into permanent legality this reconfigured global order by founding a new Iraqi constitution. And if what is at stake today is a moral intervention that not only prefigures imperial order in anticipation of "the power of its pacifying and productive intervention of justice"[39] but also one that legitimates empire postfactum because of its effective results, then it must also be asked in the case of the Amnesty International controversy: *Why* was the occupation of Iraq

retroactively legitimated and *who* was the enemy constituted as a function of this legitimation?

"On the eve of the threat of Islamic fundamentalism in Iraq," a WTI-Istanbul organizer argued, in support of the AI campaign, "asking for a constitution that respects human rights is a rational and necessary demand," and stressed in conclusion that "we should separate our enemies from our friends." In this argumentation, the enemy issuing the threat was represented by the figure of "Islamic fundamentalism," while the object of the threat, whose friendly defense the Amnesty International action and the new Iraqi constitution could apparently serve, was the figure of "human rights," which were implicitly asserted as threatened by Islamic fundamentalism.

To this logic, which legitimated the effective results of empire's violence post-factum—in this case the new Iraqi constitution, a "legal" occasion born out of what Hardt and Negri call empire's "productive intervention of justice"[40]—another WTI organizer from Lisbon objected:

> How short, how limited, is the position of those who argue strictly behind the general speech of human rights. Evidently, all of us want human rights to be respected, for stronger reasons in Iraq. But that does not mean that we have to fight a battle to include them in this Iraqi-US constitution. What serves best as defense of human rights in Iraq now: trying to inscribe them in a constitution that is wounded of illegality from the start, a constitution that was meant only to prolong indefinitely the occupation and cover it with a "legal" text—or supporting those who denounce vividly the occupation and therefore refuse a constitution that is a sharade [*sic*]? What is, given this frame, the "rational and necessary demand?"

From a "pragmatic" perspective another response, addressing the fact of the new constitution as an irreversible given to be accepted, came from a WTI organizer in Istanbul: "Regardless of what we [the WTI] think and what we do/did, that Constitution will be in force very soon; and again, [whether] we like it or not, the people of Iraq (both supporters and opponents of the regime) will be governed by that very constitution. So instead of wasting time on what AI was doing and how we should act against it, it could have been much more effective and wiser to discuss the possibility of starting another initiative that will campaign to protest the constitution by Iraqis." In Iraq itself, one exceptionally vocal Iraqi—the feminist Yanar Mohammed—had

already taken the initiative of campaigning with others "to protest the constitution." Yet strikingly, in contrast to the anticipation of the stable establishment of law and order through a new constitution destined to be "in force very soon," she had asserted from Baghdad (less than a month before this WTI e-mail), "the beginning of the civil war has just been legislated, and they call it a constitution."[41] According to WTI organizers contributing to the debate in support of AI, however, the problem of the fundamental legitimacy of the new constitution—a central question for Yanar Mohammad, constituting the bloody occasion for civil war among Iraqis—this question of *fundamental legitimacy* was irrelevant, except as a question of "wasting time."

Defended in these terms, the Amnesty International campaign for a human rights–based constitution in Iraq provides a prime occasion for asking and responding to Wendy Brown's question: "If they [human rights] stand for political power's moral limit regardless of its internal organization or legitimacy, what is their political positioning and effect in this work?"[42] To the cases made in defense of the AI campaign, what Brown suspects of human rights activism applied well, namely, that it "displaces, competes with, refuses or rejects other political projects"[43]—including what I name the politics of legitimacy embodied by BT's letter to AI. If this is true, then human rights activism, far from being "the most that can be hoped for at this point in history,"[44] whether in Iraq or elsewhere, represents only "a particular form of political power carrying a particular image of justice,"[45] one that is (and should be) disputed for its reduction to and limitation by the politics of legality, for its legitimation of and appropriation by the force and the fact of the given, for its oppression by the temporal horizon of an unfortunately sad but true future now already "in force very soon," and for its practice of what Brown calls *the politics of fatalism*.[46] It is in this spirit that I, too, participated in the Amnesty International debate within the World Tribunal on Iraq network in September 2005, contributing the following thoughts:

> personally, i would put my name under the letter to amnesty international. with due respect for the important work that amnesty international has been doing, i think that if one considers the occupation and the constitution written through it as illegitimate (as the [WTI] Istanbul conclusions state), then to be making demands on the constitutional process to "respect human rights" is a paradoxical stance.

> as [stated], "regardless of what we think and what we do/did, that Constitution will be in force very soon; and again, [whether] we like it or not, the people of Iraq (both supporters and opponents of the regime) will be governed by that very constitution." this is a tough call, one reminiscent of the centuries old dialectic between reform and revolution. i think that the historical moment we are in requires that we leave no stone unturned and take no institution and no discourse for granted. this letter [of the B*Russell*s Tribunal] draws attention to some fundamental problems associated with a politics based on human rights and its implication in the legitimation processes of empire building—a problem that not only amnesty international, but also ourselves need to be vigilant about.

Fundamental or Constituted Rights? The Human vs. The Citizen

Étienne Balibar begins his reflections on the possibility of "a philosophy of human civic rights" by positing that the rights of the citizen form the goal of a democratic constitutional order. He then proceeds to interrogate the tensions and aporias that animate their democratic foundation. Balibar elaborates, "In philosophy, *foundation* is to be understood as meaning the explanation of a principle, particularly a constitutive principle," and that he is in this sense "concerned with something like a constitution of a constitution."[47] Literally, the Amnesty International controversy within the World Tribunal on Iraq network was also concerned with the constitution of a constitution in the newly founded Iraq. The site where Balibar identifies a difficulty of principle attending "what constitutes the philosophical revolution inherent in modern citizenship" is, I suggest, where this WTI controversy resided:[48] "Ideally (or normatively, if you prefer) modern citizenship thus institutes an equation, a reciprocity of perspectives, a coextensivity of the predicates of humanity and those of citizenship. . . . It thus equates in principle generic humanity and citizenship, implying a juridical adequation of the 'rights of man' and the 'rights of the citizen.' It is thus, if you will, the principle of democratic constitution in its typically modern universalist conception."[49] It was this *precarious* coextensivity of the predicates of humanity and of citizenship, coupled with the implied yet ambiguous juridical adequation of the "rights of man" and the "rights

of the citizen," that were the condition of possibility not only of the Amnesty International campaign but also of the WTI controversy concerning AI's position on the constitutional process in Iraq.

First of all, it was from the point of view of "humanity," the rights of the human as such, and an international law that presumably embodies "international human right standards," that Amnesty International could see, in its words, "a unique opportunity" in the constitutional process in Iraq, and could assert with universal posture that "very few countries today have the chance to go through this process."[50] Yet, as AI was fully aware, if humans populated Iraq, they were at once its citizens. In fact, it was in their capacity as "citizens" and *not* as "humans" that Iraqis were declared to be the constituent subject of the constitution in the first sentence of the AI memorandum: "The people of Iraq are now engaged in a process of drafting a constitution."[51]

Second, it was the implied juridical adequation between the "rights of man" and the "rights of the citizen" that Balibar recognizes as the consequence of a distinctly modern "*universalization* of the status of the citizen,"[52] which was the very site of Amnesty International's intervention in the "Iraqi" constitution. In Balibar's account of "the universalization of the status of the citizen," two universalities are at play: the extensive and the intensive.[53] According to Balibar, the articulation of national citizenship and international law belongs to *extensive universality*, which constitutes the cosmopolitical horizon of the modern status of the citizen. How can this articulation appear in praxis? The AI memorandum, immediately after its introduction, titles the next section of its intervention "The Relation between National Law and International Law." Under this section, AI asserts with decided force, "in case of conflict between national law and international law, the Constitution should specify that international law should prevail." And the next sentence laments, "however, the draft Constitution states that Iraq is committed to international treaties as long as they do not contradict the Constitution." At stake here is the cosmopolitical horizon of the citizen, who is both a "national" and a "human" subject. And hereby becomes unequivocal the equivocal character of the juridical adequation between "the rights of man," represented by human rights treaties in international law on the one hand, and "the rights of the citizen," embodied by the national law of the constitution on the other. Who shall decide then, the human or the citizen, and whose hands shall applaud which decision, when thus speaks universality?

Balibar further argues that "even more important [than the extensive] is what I would call an *intensive* universality, which gives as 'subject' for political

participation *common humanity*, the *Gattungswesen* or 'species-being' as Hegel and Feuerbach called it, the man without particular qualities."[54] But it is difficult to determine, at least in this case, if the conflict between national law and international law, and the position taken on it by AI, concerns an extensive or an intensive universality, as schematized by Balibar. In AI's critique of the Iraqi constitution, what is mobilized is a universality that renders indistinguishable the distinction, even if valid once (upon a time?), between its extensive and intensive kernels.

Balibar grants this possibility only in passing, when addressing the constitutional perspective in its extension to "postnational or supranational spaces and in particular the space of Europe"—the possibility that "to tell the truth, the two aspects (the extensive aspect—the passage to supranationality—and the intensive aspect—the democratization of public powers) are not separable."[55] In my judgment, only when the cosmopolitical horizon of humanity is first understood beyond the nation (for instance, in terms of what many WTI organizers referred to as "world citizenship"), only then the possibility of understanding humanity beyond the scope of citizenship—hence both of national law and the state form itself—effectively opens up. And here opens up also the question, rarely asked but often presumed, of the adequation that obtains between the predicate of "humanity" and the form of international law itself.

So if the universal subject position of Amnesty International, in praxis, transfuses extensive and intensive universalities into one another, what can then be said of "the Iraqi people" and its status as a subject of politics in the eyes of AI? Is it true what has been asserted above about the Amnesty International memorandum, namely, that "the people of Iraq" are considered subjects in the constitutional process not in their capacity as "humans" but as "citizens"? The answer seems to be both yes and no. Yes, in the AI memorandum, "the people of Iraq" appear in the form of *human subjects as citizens*, affirmed in their position as a singular, national constituent subject in the classical sense of democratic theory, as in the phrase "The people of Iraq are now engaged in a process of drafting a constitution."

And yet, implicitly, and perhaps with firmer judgment, the AI memorandum projects a quite different image of the subject position of "the people of Iraq," a subject position that can alternatively be named *citizen subjects as humans*. This projection reflects a sense of the "subject" as the "object" of power. Here, rather than the collective constituent subject of "the people of Iraq"—and in conflict with it—appears the human individual as an object of

collective power to be shielded and defended from it. Consider as example the following AI assertion in its memorandum: "However, it is also important to ensure that the Constitution protects the human rights of everyone, without discrimination, that the cultural rights of groups and communities are balanced with the rights of individuals, and that traditional practices of tribes and other minorities are exercised in a way that does not conflict with international human rights standards. . . . It is essential therefore that if parallel justice systems are to be allowed to continue to function, steps should be taken to ensure that they must not conflict with international human rights standards . . . If this cannot be done, they must be abolished."[56] Here the human individuals of Iraq, every human one, appear as object-subjects to be *protected* from the excess of collective rights, which are formulated by AI as alternatively belonging to "groups," "communities," "tribes," "minorities," and to the constitution itself. Elsewhere in the memorandum, Amnesty International makes explicit, in the case of women's rights, another source of collective rights and the human rights concerns that inevitably seem to follow from them: "While the draft Constitution includes the positive provision that guarantees equality for women in the political, social, cultural, economic, educational life, this, according to the Constitution should not be inconsistent with provisions of *Shari'a*. Amnesty International believes that guarantees for equality for women's rights should be consistent with international law."[57] In other words, to the disapproval and disagreement of Amnesty International, where "the people of Iraq," through the draft constitution, may formulate Shari'a as the ultimate source of law's provisions that should not be (self)contradicted by any national law, AI instead inscribes, in highest sanctity, international law.

Bracketing for the moment the question of theological vs. secular substantiations of rights, it is nevertheless crucial to highlight how AI implies a potential source of conflict between what I call constituted and fundamental rights. On the one hand, there is the singular, constituent subject of "the people of Iraq" asserted to be drafting a particular national constitution to embody the rights of the citizen. On the other hand, and in conflict with the former, there is a multitude of individuals (and "women") who appear as the object-subjects of constituted power and whose fundamental, universal "rights of the human" are embodied by international law. As I noted earlier, Amnesty International uses as interchangeable with "human rights" and "human rights standards" the sanctified category of "international law," their presumed embodiment. Ultimately, if as proposed by the anthropologist Talal

Asad, one should "analyze human rights law as a mode of converting and regulating people,"[58] those advocating the supreme sanctity of the international law of human rights—AI, and also many WTI participants in the case at hand—can in turn be seen as the practitioners of a mode of conversion who act through the putatively universal truth of the human and her rights.

The Vigor of "Democratic" Constitution: Fait Accompli?

My analysis of the Amnesty International intervention in the constitutional process of Iraq—in conjunction with the controversy this intervention sparked within the World Tribunal on Iraq network—reveals the competitive "duality of interpretations of the idea of democratic constitution of rights."[59] That duality involves, in Balibar's words, "a relation of 'unacknowledged competition' between a perspective that sees the constitutional order as founded on the Rights of Man considered as fundamental rights (*Grundrechte*), and one that sees it as founded on the principle of popular sovereignty."[60] Here, the theologico-political context in which the "Rights of Man" were declared fundamental, as rooted in "nature," needs to be highlighted. At the turn of modernity, the declaration of the "Rights of Man" was made in reference to the transfer of sovereignty, or rather, to the transfer of the *locus* of sovereignty from the transcendental realm of the divine to the earthly and "natural" body of Man (which, it can be added, has not for this reason been any less infused with divinity). Further still, over the course of two centuries and more, as this negated divine foundation increasingly recedes to a forgotten background in a "secularized" context, the category of Man reemerges, reconfigured in its meaning, mobilization, and reference. Man and the fundamental, natural rights of "the human" stand not in reference to a transcendental, divine sovereign, but are posed instead against an earthly, and presumably immanent, citizen-constituted sovereign power.

If this is a plausible historical trajectory of the "fundamental rights of man" as a foundational principle of a democratically constituted order, what of the other principle that is in "unacknowledged competition" with the former? What is the foundation of "the democratic idea of (popular) constituent power"[61] as a principle of democratic constitution; what "project," in Balibar's language, predicates the principle of popular sovereignty? At the turn of modernity, citizens who declared independence from divine sovereignty faced another problem: how to constitute the law/state such that they would not be

the *subjectus*, or the subjected of what they had themselves constituted, but the immanent *subject* of this constitution, its permanent creative author at work, its "own constituent authority"?[62] Hereby emerged the concept of popular sovereignty, in its classical republican formulation by Jean-Jacques Rousseau.

It is important to observe with Arendt that Rousseau "derived directly from the will" his theory of sovereignty, "so that he could conceive of political power in the strict image of individual will-power."[63] As Arendt notes further, among modern political theorists, it is Carl Schmitt, "the most able defender of the notion of sovereignty," who also "recognizes clearly that the root of sovereignty is the will."[64] It is only when the image of individual (sovereign) will is projected onto the mirroring plane of collective will that the latter appears as a singular self, sovereign in its "general will." This projection retains an ideal associated with individual will power: that it be "autonomous." On the national terrain, formulated thus, a multitude of individuals, "the people of Iraq" for instance, constituting itself as a popular collectivity, is to be a singular sovereign subject while its general will is executed in autonomy. On the global terrain, as the Global War on Terror has demonstrated, sovereignty-as-will appears as a collectivity of nation-states, if not "humanity" as such, a collectivity that constitutes a global "Coalition of the Willing" in its singular claim to sovereign power over the earth. The students of Carl Schmitt, in power and coalition, must have learned their lesson on sovereignty willingly well.[65]

But wherein resides the tension and competition, even "antithesis"[66] according to Balibar, between the two foundations that predicate the democratic order—"the democratic idea of (popular) constituent power and of the democratic (in a different sense) idea of fundamental rights"?[67] For his part, in order to expose the stakes of this antithesis, Balibar turns to two theorists, Jürgen Habermas and Ernst-Wolfgang Böckenförde, and addresses their respective attempts to resolve the antithesis from the perspective of fundamental rights and constituted rights.[68] It is fruitful to read Balibar reading the two men, and do so against the grain of the constitutional process in Iraq. For the case at hand, the antithesis that Balibar distinguishes in his reflections was the very source of the controversy over Amnesty International's campaign for a human rights–based constitution in Iraq. Balibar observes that the competition between constituted rights and fundamental rights concerns "two different ways of understanding the *principle of autonomy*," of Rousseauist and Kantian descent respectively.[69] In the Amnesty International controversy, the

competition between these two understandings of the principle of autonomy entailed, on one hand, a principle that privileged the "fundamental rights" and autonomy of the individual/human over the "constituted rights" and autonomy of the popular/national collective; and on the other, a principle that privileged the "constituted rights" and autonomy of the popular/national collective over the "fundamental rights" and autonomy of the individual/human.

As is well known, Habermas proposes to resolve the conflict between two competing constitutional principles by introducing a third term: "The solution Habermas poses in response to this dilemma, which he sees as coextensive with the entire modern constitutional tradition, takes a transcendental form in that he introduces a *third notion*. . . . For Habermas this term is to be found in the 'communicational' sphere or 'sphere of communicational activity' in which 'the illocutionary binding forces of a use of language oriented to mutual understanding serve to bring reason and will together.' . . . We might naturally wonder whether this "solution" is not in fact circular, since the communicative procedure is quite likely to be the *effect rather than the source* of 'consensus' or mutual recognition."[70]

The perceptiveness of Balibar's critique of the solution offered by Habermas emerges clearly if one considers the attempted constitution of a democratic order in Iraq. First and foremost, in the case of the "Iraqi" constitution, drafted in differing versions in English, Arabic, and Kurdish[71] and translated by the occupiers who in violence enabled the constitution and its language in the first place, "the illocutionary binding forces of a use of language"[72] become suspect precisely in their capacity to force reason and will together. Second, as Balibar asserts, the very establishment of a sphere of communicational activity mapped in the constitution of a democratic order in Iraq was the *effect rather than the source* of "consensus." And even then, this was a consensus primarily between the United States and the United Kingdom in their decision to effect regime change in Iraq and only subsequently among those citizens who decided to collaborate in the "Iraqi" constitutional process initiated by its occupation. Further, the very legitimacy of the establishment of a communicational sphere in the interstice between the fundamental rights of the human on the one hand and the constituted rights of the people of Iraq to be exercised through popular sovereignty on the other was contested both in and out of Iraq, as the B*Russell*s Tribunal's letter explained to Amnesty International.[73]

If Balibar finds unsatisfactory Habermas's circular solution, which "in reality is much closer to the Kantian moral perspective, and thus foundation in terms of *Grundrechte*, or the universalization of individual guarantees of

rights,"[74] how does he evaluate the jurist Ernst-Wolfgang Böckenförde,[75] who privileges instead the foundation of a democratic order in terms of popular constituent power? Balibar writes: "Böckenförde interrogates alternatively the difficulties of the idea of "constituent power" inherent in the democratic tradition (in fact *properly belonging to it*) and the problems posed by the idea of an *immediate validity* of *Grundrechte* or the fundamental liberties of the individual, which posttotalitarian constitutions have once again insisted on with great force in order to take into account and guard against the possibility—devastating for the universalism and rationalism of modernity—of an expression of popular sovereignty becoming exclusionary and even annihilating minorities."[76] Here, it is crucial to observe how, in contradistinction to the *immediate validity* of the fundamental, human "rights of man," the mediated vigor and legitimacy of the "rights of the citizen"—the constituted rights of popular sovereignty—emerges in the democratic tradition as a contingent project. The democratic project of constituent power is contingent in at least two senses. First, it cannot simply be posited but needs to be produced actively and formally. Second, and substantially, an expression of general will or constituent power can correspond to a range of political positions, which cannot ever be presumed to correspond to a particularly democratic desire—that, say, safeguards individual rights and liberties—as the examples occasioned by the exercise of general will in Nazi Germany or by the United States in the Guantánamo Bay reveal.

To guard against this possibility, Böckenförde "incorporates into his definition of the conditions or rules for the exercise of constituent power (and into its exercise itself) prescriptions and guarantees formulated in terms of 'fundamental rights,'" whereby in relation to the latter, constituent power still retains primacy and "continues to be determining."[77] Thus, translated into the political dynamics of the Amnesty International position on the draft Iraqi constitution, if Habermas were to serve as the author of the AI memorandum, arguing for "determination in the last instance"[78] by the fundamental rights of the human and their embodiment in international law, then conceivably, Böckenförde would advocate on behalf of the constituent power and popular sovereignty of "the people of Iraq," affirming the latter as ultimately determining in the moment of decision between an international law of human rights on the one hand and the national law of "constituted rights" on the other. This stance would indeed be consistent, if consistency is sought in matters of principle, with Böckenförde's striking insistence on a decisive difference, "the *difference between citizenship and humanity* that must subsist *in practice* in order

for the 'people,' even 'unorganized,' to remain a political subject" and "not be dissolved into a multitude of individualities" as "it could be formulated by an abstract individualism or cosmopolitanism."[79] Note that in such formulations, a multitude of individuals called "humanity" is posited in its *incapacity* to constitute a political subject, in contrast to the comparable *capacity* of a national "people" who presumably is not such a multitude.

On this note, a third contingency affecting the vigor of the democratic project of constituent power and popular sovereignty can be posited: to the extent that state sovereignty claims to reign autonomously under the authorizing emblem of a singular constituent power and its identifiable general will, the legitimacy of this claim—what I call fundamental legitimacy—is both in theory and practice open to contestation, given the actual and potential plurality of the multitude in whose mind and flesh "the people" lives. In fact, according to political theorist Paolo Virno, the very contestation over the "fundamental legitimacy" of a singular people-state to rule *as if* it were a single autonomous self, the plural selves of the multitude—defined by Virno as "the form of social existence of the many, seen as many"[80]—is constitutive of the war, in theory and practice, through which the "the people" won over the "the multitude," and did so in the modern era, which Virno dates to the seventeenth century. To establish the stakes of this war, Virno turns to none other than Thomas Hobbes, who "*detests*"[81] the multitude: "The multitude, for Hobbes, is inherent in the 'state of nature'; therefore, it is inherent in that which precedes the 'body politic.' But remote history can re-emerge, like a 'repressed experience' which returns to validate itself, in the crises which sometimes shake state sovereignty. Before the State, there were many; after the establishment of the State, there is the One-people, endowed with a single will."[82] And in the birth of a new regime, between the before and the after of the State of Iraq, whether from the realm of a "state of nature" or not, but on account of the crisis that unsettled its sovereignty and realized a new constitutional process, what returned to validate itself—in the spectral shadow of a civil war among the multitude of "the people of Iraq"[83]—was a *primary question* concerning the foundation of national/popular/democratic sovereignty and its historical, moral, and political reasons and legitimacy in being. In short, nothing short of "the very threshold of the political order itself" was called into question.[84]

Thus, when the soldiers of the United States, the United Kingdom, and the Coalition of the Willing stepped into Iraq and dropped their uranium-enriched precision bombs[85] designed to liberate inhabitants on that surface of

the earth, the precise spot where Balibar identifies the impossibility of assigning "the metaphysical point" at which "the juridical might be able to found itself" emerged in torturous materiality.[86] On the one side, an "essential impurity of right" was provoked into appearance at the metaphysical point at which the juridical order, in "autofoundation," found it impossible to found itself without referring to a prior origin.[87]

On the other side, however, this essential impurity of right appeared only more manifestly, in its pure impurity, because the case in question was not one of auto-foundation but what I call "alter-foundation."[88] Consider the emergence of a new constitution in Iraq. Did the liberation of Iraq by the Coalition of the Willing constitute an auto-foundation or an alter-foundation, an *auto*/nomous/foundation by the self, or an *alter*/nomous/foundation by the other? As I noted earlier, the answer given by the B*Russell*s Tribunal in its letter of protest to Amnesty International was decisive in the first sentence: "The legitimacy and autonomy of this government [engaged with the constitution], installed and completely controlled by the US occupation forces after an illegal and illegitimate war of aggression is not only challenged by a large part of the Iraqi population, but also by the international peace movement and international lawyers." Hereby, both the *legitimacy* and the *autonomy* of the government engaged with the constitution were negated on account of its installation and control by the occupation forces positioned outside of and in alterity to a national citizenry. Further, the BT asserted, this alterity constituted, far from a right to constitution, an *impurity of right to existence*, an impurity recognized by a large portion of "the Iraqi population," or the citizenry in whose name the Iraqi government claimed to exist.

Yet, other subjects the B*Russell*s Tribunal mobilized to delegitimate the Iraqi government—in particular, the international peace movement and international lawyers—should occasion a more complex consideration beyond the national citizenry whose popular sovereignty illegitimately failed to be realized in autonomy. Exactly here can be asserted a fourth contingency affecting the mediated vigor and legitimacy of the democratic project of popular constituent power—that of the *nomos* of the earth. Commenting on Carl Schmitt's understanding of *nomos*, and "fully aware" that her use "may not be what he intended," political theorist Susan Buck-Morss observes that "in distinguishing between sovereign power and mere state power," *nomos* allows one to see something hidden.[89]

Interpreting the same passages from Schmitt I discussed earlier, Buck-Morss writes:

> The Law that makes laws legal is established by a prior exercise of sovereign power. Schmitt describes it as "a constitutive historical event—an act of *legitimacy*, whereby the legality of a mere law is first made meaningful."[90] The Law is not itself the written Constitution, but the unwritten imperative that precedes it as an orientation, a sovereign positioning in space that is documented by the Constitution as a *fait accompli*. Sovereign power exists before and beside the state, and can never be subsumed as immanent within it. Carl Schmitt calls this transcendent power *nomos*, the ancient Greek word for Law. And whereas laws (*nomoi*) are multiple and changing, they appeal to the Law for legitimation. Schmitt reserves the term *nomos* for Law in this second sense, as constituting power that bestows upon the laws their sovereign legitimacy. . . . When, as is common, given the legal positivism that underlies liberal approaches to political science and democratic theory, "sovereignty" is equated with "autonomy," the distinction disappears. Autonomy—auto-*nomos*—seems to deny the existence of any problem that needs to be addressed, reducing sovereign power to a tautology.[91]

Considering the specific example in question here, the constitution of the State of Iraq, the problem Buck-Morss addresses can be articulated thus: if the constitution of Iraq sought to document as fait accompli a prior exercise of sovereign power—the constitutive historical event that was the occupation of Iraq by the Coalition of the Willing—and if this eventful exercise of sovereign power was an "act of legitimacy," who or what confers this legitimacy? And if the conferrer is named *nomos*, or the law before the constitution—the law that makes the constitution as such "legal"—*where* is this *nomos*, or the ordering principle, located? Buck-Morss inquires further: "By what sovereign power is the *inter*national space constituted, the global order in which state actions are deployed? It is a sheer fiction to posit that pre-existing autonomous nations come together and decide freely to yield their separate sovereign powers and submit to a world order of their own making. On the contrary, nations are allowed into the world order if, and only if, they obey the ordering principle of that world, and this ordering principle is precisely what the word *nomos* allows us to capture."[92] Here too, the B*Russell*s Tribunal provides its unique answer by designating a location and orientation for the *nomos* that confers (il)legitimacy to the constitutive historical event that brought a new Iraqi constitution into being. This conferring *nomos* can be found in the judgment not

only of "the people of Iraq" but also of the international peace movement and international lawyers, that is, in the international sphere, as indicated in the B*Russell*s Tribunal's letter to Amnesty International.

To establish the nexus between sovereign legitimacy and the international sphere, Buck-Morss addresses as example the election of Hamas as the government of Palestine "in a highly participatory, democratic and fair process."[93] Nonetheless, she observes, "the recognition of its sovereignty is presumed by the Western powers as leaders of the 'world community' to be theirs to bestow or withhold."[94] Further, she adds, "the whole conception of 'rogue states' presumes the extra-national source of sovereign legitimacy,"[95] while "sovereignty is not only outside of domestic legality, but also inside of another juridical space, that of international law, in a way that changes the parameters of the problem significantly."[96] One can supplement this observation by positing that sovereignty is inside not only of international legality, but also of another political space, that of global legitimacy.

This global space of legitimacy corresponds to what Schmitt named "the *nomos* of the earth," and as such constitutes the fourth contingency affecting the vigor of the democratic project of constituent power. In fact, this contingency was mobilized in the wider "politics of legitimacy" of the B*Russell*s Tribunal, and in the World Tribunal on Iraq's culminating session in Istanbul. In *not* recognizing the sovereign legitimacy of the newly constituted Iraq and in denying legal and legitimate standing to all laws and contracts resulting from the occupation—in particular the constitution—that would document as fait accompli the revolution effected in Iraq by the Coalition of the Killing,[97] the World Tribunal on Iraq would assert itself as the legitimate bearer of the *nomos* of the earth.[98]

Concluding his reflections on the philosophy of human civic rights, Balibar, too, considers democratic constitution as a fait accompli, which affirms the possibility of an adequation, as "a matter of consequence," between fundamental rights and constituted rights where, he finds, "as a matter of principle," this adequation is unavailable.[99] The new constitution in Iraq was likewise treated as a fait accompli, as a matter of consequence, by both the Amnesty International campaign and by those WTI activists who supported or objected to protesting it. By contrast, in the immediate moment—September 2005—when the Iraqi constitution was being created, those who protested the Amnesty International campaign *negated* as illegitimate an adequation of consequence between fundamental rights and constituted rights, while the "metaphysical" and the "material" instants of foundation coincided before

their very eyes. In a flash then, the limit of the ideals of fundamental rights and constituted rights, and the limit of these limits, became visible in the constitution of Iraq as the "consequence" of its liberating occupation by the Coalition of the Willing.

What became liberated in this split second, which this book assumes as its task to record, was "an image which flashes up at the instant when it can be recognized, and is never seen again," a flash only whence "the past can be seized," while, in the words of Benjamin, "the true image of the past flits by."[100] Benjamin himself conjures up one such image, while he establishes how violence as such "is able to found and modify legal conditions":[101] "Yet, it is very striking that even—or, rather precisely—in primitive conditions that know hardly the beginnings of constitutional relations, and even in cases where the victor has established himself in invulnerable possession, a peace ceremony is entirely necessary. Indeed, the word 'peace,' in the sense in which it is the correlative to the word 'war' . . . denotes this a priori, necessary sanctioning, regardless of all other legal conditions, of every victory. This sanction consists precisely in recognizing the new conditions as a new 'law,' quite regardless of whether they need *de facto* any guarantee of their continuation."[102] It was the involuntary return of this ancient memory, the ceremony of the victor enemy benevolently bequeathing, in the "peaceful" conclusion of conquest, a new law, whose illegitimacy the World Tribunal on Iraq activists wished to record into history, out of the oblivion of a fait accompli.

Conclusion

Considering Balibar's reflections on a philosophy of human civic rights, and "the process of *emancipation* whose political name, in fact, is 'democracy,' "[103] it is difficult not to be struck by the national parameters of his thoughts drawn disjunctively within the global horizon of the universal principle he addresses.[104] Second, to the extent that a democratic foundation in adequation of the competing principles of fundamental rights and constituted rights is not available as a matter of principle, but only appears as an "immediate given" when considered as a matter of consequence, a question not raised by Balibar strikes back against the grain: *consequence of what*? The answer seems to be, as rule rather than exception, violence.[105]

If the democratic idea, or the idea of emancipation, "denotes both a universality of principles posed (and declared) within the horizon of humanity,

and an autonomy of decision that is instituted as 'popular sovereignty,' "[106] this declaratory pose—at least since the French Revolution and its Revolutionary Wars toward the "fraternal liberation" of peoples in Europe—has been at once imposed and opposed by violence, in spaces internal and external to such a democratic constitution, or, on the very threshold between the inside and the outside of its expansive reach. Similarly, the violent regime change and the new constitution initiated in Iraq by the Coalition of the Willing in the name of "democracy" and "liberation" must occasion a confrontation with the very limit attending the democratic idea, or the idea of emancipation. This is the limit between—"since every limit concept is always the limit between two concepts"[107]—a universality of principles posed within the horizon of humanity on the one hand, and the simultaneous positing of a national autonomy of decision in the form of popular sovereignty on the other.

I must underline, moreover, that a confrontation with such a limit—or the limit of two limit concepts—would have an extensive genealogy, dating back at least to the French Revolution and its Revolutionary Wars. In this context, the account of revolutionary debates presented by the historian of political thought Istvan Hont clarifies—independently of his interpretation of them—the foundational ambivalence attending the democratic/emancipatory limit at the very moment of its revolutionary realization through violence in and beyond France as a "nation-state."[108] It is more than relevant that such debates concerned the proper subject of sovereignty—whether it was to be the nation, the people, or the human race—while "nationalism" and "cosmopolitanism," with admittedly different connotations and constellations than in the present, sustained the major and shifting distinctions within debates (and executions) during the French Revolution and its liberating wars.[109] For example, Hont argues that Maximilien Robespierre, on behalf of the Jacobins:

> went out of his way to note that the most glaring discrepancy between the stated intentions of the *Declaration* [of the Rights of Man and of the Citizen in 1793], as a document putatively addressed to man in general, and its actual social and political content was in the adoption of the notion of national sovereignty. . . . If sovereignty meant anything, it had to be all inclusive, uniting, rather than dividing peoples. The "sovereign of earth," he claimed, was the "human race" and the "legislator of the universe" was "nature." . . . Against them [criminals of mankind, such as kings and tyrants] Robespierre posited the notion that 'the men of all countries are brothers, and the different peoples

> must help one another, according to their power, as citizens of the same State." What the doctrine required was political homogenization on a world scale and moral cleansing of a totally universal character.[110]

While Hont interprets this position—remarkably similar to contemporary cosmopolitan projects[111]—as a clear marker of "the Jacobin attack on sovereignty,"[112] it is arguably not an attack on "sovereignty" as such, but an attack on *national* sovereignty, to the benefit of a *universal* sovereignty of the human race. It is on this ground that Richard Tuck, with reference to Hont's account, can contend that Immanuel Kant's *Perpetual Peace* was appropriated *not* by the Jacobins—who expressed a radical cosmopolitanism during at least the first two years of the revolutionary calendar—but was appropriated by the "nationalism" of the "Sieyèsians," for the very reason that the vision presented in *Perpetual Peace*, published in the third year of the revolutionary calendar, privileged a Hobbesian account of national sovereignty and was *not* seen as radically cosmopolitan as other visions available in the context of the French Revolution and the eighteenth century.[113]

In historical accounts of the emergence of the rights of man, popular sovereignty, and the making of international law, references are rarely made to a cotemporaneous occasion with the French Revolution and its Revolutionary Wars: the singularly pertinent Haitian Revolution, "the crucible, the trial by fire for ideals of the French Enlightenment,"[114] which tested, at once, the emancipatory limit attending the universality of principles posed within the horizon of humanity and the autonomy of decision declared in the form of popular sovereignty. In rare accounts of the "practical" trials of the democratic/emancipatory limit in relation to international law, more often cited—yet still insufficiently—is the challenge posed by the Revolutionary Wars and the Napoleonic Wars within the "internal" context of a *jus publicum Europaeum*.[115] As the legal scholar Nehal Bhuta argues:

> The revolutionary government in France renounced the right of conquest, and offered instead its "fraternity" with peoples who rejected the dynastic principle of legitimacy in favour of popular sovereignty. International conflicts over treaties and defined legal rights thus became struggles over fundamental political principles, in which the French claimed that rights based on popular sovereignty transcended those based on treaties. Instead of annexing territories which came under their effective control, French armies replaced the religious and

> dynastic political authorities with popular committees, under revolutionary guidance from France. In other words, the revolutionary wars, and the Napoleonic wars that followed them initiated constitutional change in place of conquest and (under Napoleon in particular) attempted to radically transform the nature of the state and accepted basis of territorial control.[116]

If this sounds akin to the violent practice of the US-led Coalition of the Willing in Iraq—the appointment of assemblies; the institution of a new "democratic" constitution based on popular sovereignty; a praxis of management through "guidance" and all such offerings in place of conquest—it indeed is, as I will reflect on this similarity toward a conclusion.

In the aftermath of the French Revolution and the Napoleonic Wars, the Congress of Vienna (1814–1815) was convened to restore order in continental Europe. The Vienna settlement was an effort to "bracket the constitutional question" and create a spatial regime "which permitted the coexistence of absolutism, liberal parliamentarianism and enlightened absolutism."[117] The legal title claimed by the US and UK governments in reference to their exercise of "sovereign power" in Iraq, as later recognized by UN Security Council resolutions, was *occupatio bellica*, a legal status first created at the Congress of Vienna.[118] The category of "military occupation" (*occupatio bellica*)—predicated on a distinction unimaginable in the context of continental Europe until the Revolutionary and Napoleonic Wars—was developed in order to first posit, and then to recognize and regulate legally, the very possibility of exercising "sovereign power" without its full prerogatives and entitlements. The title *occupatio bellica* was based on a new and improvised distinction between "legitimate right and effective power," and according to Carl Schmitt also one between "true law and mere fact."[119] Thus, within the order of *jus publicum Europaeum*, while an occupying military was to be recognized as "sovereign" on account of its *effective* and *factual* exercise of sovereign power over the occupied territory and its population—whence its violent capacity to maintain order and provide security would constitute factual evidence of its effective sovereignty—it was now to be denied a legitimate right to exercise complete or full sovereignty over that population.

In other words, the title and status of *occupatio bellica* was developed specifically in response to and in repudiation of "the revolutionary imperative of universalizing a specific order"[120] as attempted by the "fraternal help" offered by the Revolutionary and Napoleonic Wars of liberation throughout Europe.

After the Congress of Vienna, when a "military occupation" was determined to occur, it was banned—with exceptions—from changing the constitutional order of the occupied territories merely on account of an effective and factual exercise of "sovereign power."[121] It is in this context that the category "military occupation, *occupatio bellica*, arose as a conceptual *antithesis* both to a *change of sovereignty* and a *change of regime*. . . . It was merely a provisional and factual occupation of soil, which determined what transpired thereon, such as an equally provisional and factual subjugation of the respective population, and the administration of their affairs and their system of justice."[122] Under provisions of *occupatio bellica*, as further institutionalized through the humanitarian law of war spelled out in the Hague Conventions (1899 and 1907), "the real objective," according to Schmitt, "was to establish a direct relationship between the occupying power's military commandant and the population of the occupied territory. A 'provisional legal community develops between the enemy and the inhabitants of the occupied area.' "[123] Significantly, it is only in reference to this "provisional legal community," instituted as a temporary state of exception, that international law can attempt to regulate legally the practice of occupying forces, even when the very initiation of the occupation—through a "war of aggression"—may be determined to be illegal in the first place.[124]

Although schemes undertaken by the occupying forces in Iraq, such as the initiation of a new constitution and the privatization of national property, may be found to be in violation of the provisions of *occupatio bellica*—as indeed argued by many advocates of the World Tribunal on Iraq[125]—the UN Security Council Resolutions 1483 and 1500 nonetheless "exhorted" the occupying forces to set in motion a process "for the formation of a new political and economic order, including the establishment of 'national and local institutions of representative government,' the promotion of 'economic restructuring and the conditions for sustainable development' and the promotion of 'legal and juridical reform.' "[126] It is only in this *legal context* that the specific campaign by Amnesty International for a "human rights based constitution" in Iraq can embody a *politics of legality*, in distinction to the *politics of legitimacy*, I suggest, that was practiced by elements of the World Tribunal on Iraq network in response. As I have argued following and extending the analysis offered by Balibar, this specific controversy—which was to be the last one—within the WTI network is emblematic of the antinomies, paradoxes, and ambiguities attending the politics of human rights today, especially in judging cases of war and occupation for "liberation." I argue that in the constitution of an imperial political order, while a politics of human rights is often engaged to delegiti-

mate states and their practices, it can paradoxically remain particularly blind to the problem I call fundamental legitimacy while contributing to processes of imperial legitimation. Within the contemporary global order, it must be admitted, *any* notion of "fundamental legitimacy"—just as well as what I contextually schematize to be the politics of legality and the politics of legitimacy—operates at the violent limit attending the democratic idea, or the idea of emancipation, since its inception: the limit between a universality of principles posed within the horizon of humanity on the one hand, and the simultaneous positing of an autonomy of decision in the form of popular sovereignty on the other.

INTERMEZZO

Can the Network Speak?

> The one who is singing is, for the duration of the song, not a subject.
> —Jean-Luc Nancy, *Multiple Arts: The Muses II*

> I thought I could organize freedom, how Scandinavian of me.
> —Björk, "Hunter," in the album *Homogenic*, 1997

In the global process of organizing the World Tribunal on Iraq (WTI), political disagreements frequently morphed into organizational debates over the tribunal's network form of cooperation. While its activists celebrated the WTI's organizational form as a "horizontal network of local groups and individuals worldwide that work together in a non-hierarchical system,"[1] this form of transnational cooperation was often found to be excruciating. To begin with, the WTI network did not function through a defined and definite "method," but as an accumulation of affective, communicative labor whose spontaneous nature and resistance to codification resulted in what one tribunal organizer duly identified as an "amorphous body," the terms and conditions of which were—as in Simon Tormey's account of the horizontal structures of contemporary anti-capitalism—"permanently impermanent."[2] In fact, the global network of the WTI could be characterized as a political association whose protocols and procedures, including those for decision making, were indeterminate yet emergent as concrete praxis (and lack thereof) throughout the constitution of the network.

Michael Hardt argues that "one of the basic characteristics of the network

form is that no two nodes face each other in contradiction; rather, they are always triangulated by a third, and then a fourth, and then by an indefinite number on the web."[3] The effects of such a triangulation, he further contends, "displace contradictions and operate instead a kind of alchemy, or rather a sea-change."[4] If this is the case, however, how can members of a network ever "decide its strategy"?[5] In the case of the WTI, while Hardt's "network alchemy" often prevented a face-off between conflicting positions and differences in judgment, the inability of this alchemy to provide an elixir for resolving conflicts induced a bitter aftertaste for many WTI activists. Whether through face-to-face interactions at international coordination meetings, or conducted as written exchanges over the e-mail listservs of the global WTI network, the triangulation of "nodes"—local organizing committees as well as individuals—by one another involved such intensity of emotion, including frustration and anger, that many participants would find the ultimate resolution in "unsubscribing" themselves from the network. In other words, while the network form allowed the conglomeration of different political orientations and judgments, it did not provide the conditions for resolving them.[6]

The ultimate controversy within the WTI network, which emerged over the B*Russell*s Tribunal's open letter of protest to Amnesty International (AI), illustrates well the difficulties of the network as a form of political organization. As a WTI-Istanbul organizer observed in this context: "Our record of discussion on the [WTI global] list cannot be considered very successful. On points of disagreement, they have frequently turned aggressive. On such instances of rising tension and unmanageable aggression, our solution has been to pull ourselves back, drop the discussion and let it die down."[7] In other words, the WTI network's triangulation of nodes in disagreement repeatedly resulted in the disavowal rather than the displacement of contradictions: any contentious issue that emerged in the network was left "to die away of its own accord," as a participant from New York remarked.

While the global WTI network consciously avoided voting as a method of decision making, it arrived at decisions through "consensus"—the basic idea being, in anthropologist David Graeber's précis, "to come up with proposals acceptable to everyone."[8] In this method of decision making, the *intensity* of responses (and lack thereof) to any given proposal for action was taken as the main indicator of the emergent decision. However, this "method" frequently resulted in an indefinite yes or no as a decision and thus prolonged the life and the death of the controversy in question.

Concurrently, although WTI participants shared a common conviction

about the virtuousness of a horizontal network form of cooperation, considerable disagreement attended determinations of what this form required in practice. In the context of the controversy sparked by the B*Russell*s Tribunal's letter to Amnesty International discussed earlier, a WTI participant identified his "organizational objection" thus: "It is to my understanding that the WTI is a horizontal network of local groups and individuals worldwide that work together in a non-hierarchical system (as clearly mentioned on our website). Yet it is quite disturbing that a number of people in this non-hierarchical system could take the liberty of ignoring the discussion within this system and drafting a letter and also getting endorsers to sign this letter without consulting the other members of the network." The problem, according to this participant, was that the B*Russell*s Tribunal (BT) had drafted its letter to AI and had "collected signatures from a significant number of people associated with the WTI" *prior* to engaging with the network as a whole. Interpreting the draft letter to AI as an effort to short-circuit the WTI network, this participant would thus urge the WTI committee in Brussels to "not send the letter to the AI on behalf of the B*Russell*s Tribunal before you consult this matter with all the people that worked for the WTI."

It was significant moreover that this objection and subsequent suggestion were framed specifically as a function of the WTI's "horizontality" and nonhierarchical network form. Yet, precisely the same model was claimed by the B*Russell*s Tribunal as the basis of its "right" to send the letter to Amnesty International, at least on its own behalf. As an organizer from Brussels asserted: "We are a horizontal network with independent cells, who can take initiatives as they see fit. So we do not have to await or take orders from anybody. . . . The nature of a network is, that people and nodes keep their independence. So I don't see the reason for the fuss. Either the WTI signs [the letter to AI] or doesn't sign, or individuals sign. . . . Why should we first ask what we can do and not do, and to whom?" Thus, while the objection to BT's letter privileged the "commonality" produced by the network in demanding a consultation with it, the participant from Brussels affirmed in response the autonomy that each node was supposed to enjoy in the network form of cooperation.

The response from Brussels also highlighted a constitutive ambiguity at the heart of the network form: who is the proper addressee of a question such as "what we can do and not do"? It indeed would have been virtually impossible to "consult this matter with all the people that worked for the WTI" even if one so desired, even if one could limit the question of "who" to those who worked. Networks do not have "members." The most tangible manifestation

of the WTI network—its global e-mail listserv—linked only a fraction of the actual number of people who had labored and participated in the WTI processes. Many local organizers and activists (as well as witnesses, advocates, jury members) had either chosen not to join the global listserv or had no choice to begin with, given that English was the mediating language. Further, only a fraction of this fraction of WTI participants ever engaged in global discussions. Even with the limited proportion of WTI activists who participated in global consultations, however, the correspondence, depending on the intensity of the passions involved, was "a little mountain in itself," as a WTI organizer living in Tunis remarked. The sheer volume of contributions, as well as what a WTI-Genoa organizer diagnosed as the "chronic illness" of the network—which "makes it to become violent if there is need to debate and if there are differences in judgment"—constituted affective difficulties that restricted participation in network deliberations.

This is not to suggest however that Hardt's "network alchemy" lacked verification in the WTI processes. It was remarkable—especially in contrast to hierarchical forms of organization with designated leadership and division of labor—how, within local WTI committees such as WTI-New York and WTI-Istanbul, as well as among them in the global network, coordinated work could be accomplished as if in "a performance of an orchestra without a conductor."[9] An organizer from an older generation of the Left in Turkey, reflecting on the process of organizing the WTI's final session in Istanbul, observed: "The most important feature of the WTI, in my opinion: its organizational-institutional independence, that it did not have a hierarchical structure, that it was the creation of individuals' own will, inclinations, and efforts. Even if those involved in the preparation process of the WTI were individually close to political movements and organizations, it was not the latter, but active participants [themselves] that determined the structure and the process (if I am not mistaken . . .). This was a large PLUS ensuring the vitality, flexibility, exuberance, and the sincere, volunteer constitution of the Tribunal."[10] Even though, she continued, many organizers from the "generation of 68" had participated in organizing the WTI long after having settled accounts and broken off with the tradition of "a centralized, authoritarian political structure," they nonetheless were accustomed to a method of work that was—in contrast to the organizing process of the WTI in Istanbul—more "centralized, orderly, and to a certain extent, more hierarchical." On the other hand, she found that her "young friends" active in the conceptualization and organization of the tribunal, "who did not come from such traditions," forcefully rejected this

preference for more centralism and "orderliness." As different generations appeared at times "to speak in different languages," it was difficult, she found, to establish trust, delimiting the participation of the generation of '68 and making them feel as if they were outsiders montaged into the process.

That this WTI participant from Istanbul would nonetheless identify its horizontal form as the most important feature of the WTI was significant, not only because she was a prominent intellectual of the Left in Turkey, but primarily because she was among those who had tirelessly endeavored to stir the WTI-Istanbul organizing process away from its "structurelessness" toward organizational clarity, even hierarchy. It was unsurprising therefore, that she would also have a keen eye for the negative consequences of a horizontal network form:

> The same feature [the absence of a hierarchical structure] also brought forth the imprint of individuals' dispositions, predilections, traits of character, and even psychological conditions in certain days, as they branded the decisions made and the work produced in the process. During the preparations for the final session, this situation turned into a factor that constrained the work. From the selection of the jury members to the contents [of the proceedings], the preferences of dominant characters were reflected at all points in the process, leaving in the shadows different suggestions. Did it all end up badly? No. Despite, some defects, it turned out right. Yet, it could have happened otherwise.

This depiction and diagnosis—echoing Jo Freeman's classical account of "the tyranny of structurelessness" in the US-based women's liberation movement—also holds for the dynamics at play in the global WTI network.[11] Given the virtual absence of fixed rules, arbitrators of conflicts, and leaders with command over the network, all depended on the passions and restraints exercised by the participants themselves. The alchemical synergy among WTI activists lasted (not without frictions) as long as the "nodes" were attuned to each other toward the climax in Istanbul. Once the culminating session took place, however, latent conflicts emerged with full force. The ambiguities of the network form—once celebrated for providing a capacity for horizontality, autonomy, flexibility, and the means to proliferate "links" with fresh nodes—increasingly occasioned serious difficulties.

So it was that, in September 2005, two years after the founding of the WTI and a few months after the final session in Istanbul, in the context of the

B*Russell*s Tribunal's letter of protest addressed to Amnesty International, a WTI-New York organizer intervened in the debate as if in a state of emergency: "I suggest that we URGENTLY NEED TO DISCUSS A DECISION-MAKING PROCESS FOR THE WTI—OR, INDEED IF WE ARE TO HAVE A DECISION-MAKING PROCESS. There is a huge amount at stake in whether or not the WTI endorses a particular letter of statement or position or group . . . and clearly a process by which a proposal is sent, amidst dozens of other emails, to a general mailing list, with the question 'can we endorse this?' is not really sufficient for the complexity of this question." That the global WTI network could function for two years without a defined decision-making process was extraordinary, but this did not mean in turn that decisions were not made. Nor was the letter to Amnesty International the first occasion when a network-wide endorsement was requested in the manner described above. The absence of a decision-making process emerged as a "problem" in the WTI network when affective bonds—in particular trust—within and among local committees and individuals began to transform into suspicion and fear. Paradoxically, this transformation took place exactly when the nodes of the network were posited to have been "pulled closer" than ever before. As the same WTI-New York organizer found:

> IT IS HARDLY SELF-EVIDENT TO ME THAT THE COMMITTEES OF INDIVIDUAL SESSIONS HAVE THE "RIGHT" (to use a term several people have used) TO ISSUE STATEMENTS OR TAKE ACTIONS UNILATERALLY. . . . All of the individual sessions have been collected together more closely than they were before the Istanbul session happened. Like it or not, we have been pulled closer together by the nature of the process, and like it or not, now that the WTI as a whole has gained a certain level of recognition, we can all expect our audiences to feel that we are all implicated in, and all a part of, the decisions made by any one of the committees involved in WTI organizing. Whatever may have been the case before, I would strongly suggest that we are more closely intertwined now, and we must live up to the responsibility to consult and discuss with each other more closely before making any decisions or taking any actions that will be perceived as being in the name of the WTI more generally.

Being thus implicated by one another's decisions would not have constituted a "problem"—to the degree of challenging the autonomy of the local nodes to

make decisions, as just evidenced above—if it were not true that within the global WTI network, "whatever the case may have been before," the extent of trust and good faith had become more meager after the tribunal's culminating session in Istanbul.

No sooner than the final session in Istanbul was over, the character of the bond that had been established between groups and individuals in the network had to be rearticulated. That the B*Russell*s Tribunal's letter to Amnesty International had specified the declaration of the WTI's Istanbul session when legitimating its objection to AI's politics of human rights also aroused anxieties of ownership over what the World Tribunal on Iraq meant politically. With this anxiety emerged the conservative inclination to guard and protect "the name of the WTI." Thus, while one organizer asked the B*Russell*s Tribunal to "not exploit the name of the WTI" by its letter to Amnesty International, another charged Brussels with an attempt to "carry the banner of the WTI and exploit its hard-earned credibility to gain recognition."

The emergent desire to bring local WTI committees under what I call "network discipline"—although presented under exclamations that "the WTI is not a party and Istanbul conclusions are not points of unity," as a New York organizer remarked—embodied a surge of anxiety unarticulated openly. An organizer from Genoa, however, eventually revealed the nature of this anxiety: "Obviously, there are problems in the expectations and backgrounds and maybe also in the different energies available, location in society etc. of each one of us, but *there is also a lot of untold worry about the different political positions and the way that politically, the WTI 'could' serve differentiated aims.* Funny enough this is a major untold, although a major point, in need of debate."[12] Nevertheless, precisely this problem—how the WTI could serve different political aims—was avoided as an explicit debate in the global network. Instead, attempts were made through *organizational* propositions to preempt the WTI's potential service to undesirable ends. It was in vain that organizers of the B*Russell*s Tribunal insisted that it "had the right and liberty to discuss whatever it wants as long as it does not speak in the name of others," and would ask in puzzlement "according to what rule is this not permitted?" For those who would not permit this, the issue was both the potential representation of their past labor by others who would speak in the name of them *and*, more fundamentally, what was felt to be their actual "implication" in the political actions of others by virtue of having been associated in a common network.

An ambiguous implication then, and not only "representation," was at

stake. It was insufficient, therefore, not to be spoken in the name of. The very name had to disappear. "We should no longer call ourselves the WTI," concluded an organizer from Istanbul for the global network. In agreement, a participant from New York found that for individual committees as well, there was "no need for such groups to continue to identify themselves as 'WTI organizing committees,' since they are no longer in fact organizing WTI sessions, but rather engaging in other sorts of actions. Indeed, it seems harmful to the specific project of the WTI to use the name for anything other than what it was intended for." It was not obvious for all, however, how the line was to be drawn between "other sorts of actions" and what the World Tribunal on Iraq was "intended for." That the latter should be limited to organizing tribunal sessions was challenged by others who argued that the conclusions of the Jury of Conscience in Istanbul carried "within themselves a logic of implementation," which required the continuation of collective work.

On the other hand, underpinning the proposition to disappear the name of the World Tribunal on Iraq after the culminating session in Istanbul was the conviction that "the WTI as a project has been accomplished and done with":

> An ad-hoc coalition is an ad-hoc coalition is an ad-hoc coalition. Except for the post-production work such as the book and the documentary which are both in the making, the WTI as a project has been accomplished and done with, by this ad-hoc coalition that has been formed around the project. But to say this is not to say that the network must be dismantled, in fact, a network cannot be dismantled as such, we all have access to it, that is, we all have to come to know one another and how we work together and thus if somebody has a new project, they can use this network that the WTI has made a gift to us all, without thereby calling it another project of the WTI, because the WTI was a project itself.

If, in this view, it was the "World Tribunal on Iraq" rather than the network constituting it that was to be dismantled, this presumed the possibility of maintaining the network apart from the ad hoc coalition that had been formed around the "project" of the WTI. In this formulation, when referring to the same groups and individuals, "the network" was conceived as a neutral infrastructure distinct from the "ad-hoc coalition" that was to accomplish the tasks and ends of the particular "project" that was the WTI. In response, while

one organizer challenged the language of "post-production," ironically remarking that he did not think that the WTI was "a movie," another stressed that the WTI was "not an event," but a political process that was yet to be completed.

Ultimately, no other example but the personal letter written by a WTI activist to the secretary general of Amnesty International better illustrates the impasses of the horizontal network form and the according fate of the World Tribunal on Iraq. As a rejoinder to the B*Russell*s Tribunal's open letter to AI, this organizer asked that his letter be attached wherever the former was used, and he addressed the AI secretary general thus:

> Irene Khan
> Secretary General
> Amnesty International
> London UK
> 18 September 2005
>
> Dear Ms. Irene Khan,
>
> As an active participant of the World Tribunal on Iraq, I am writing to you regarding the letter being sent to you by the Brussells Tribunal Executive Committee. While respecting the views of all those who signed the letter, I want to make it clear that it should not be perceived by your organization as a common and official stand of the World Tribunal on Iraq (WTI). My letter also purely reflects my own views and is not written on behalf of the WTI or does not necessarily reflect the views of other individuals in this international network.
>
> WTI is a horizontal network of local groups and individuals worldwide that work together in a non-hierarchical system. . . . WTI is not even an organization in the common understanding of the term. It does not have a board, national offices or even staff. It is therefore important for me, as someone who has worked voluntarily as one of the media and communications coordinators for the culminating session in Istanbul, to clarify that the letter sent to you is not one endorsed by WTI generally as it is not even within the remit of this initiative to take such action.

> The purpose of my letter is not to undermine the views of all the respected people who have signed the open letter but to make a clarification in order to avoid any misunderstanding in the future.
>
> Kind Regards
> [signed]

The repeated negations in this short letter, evidenced by the striking frequency of the word "not," attests on the one hand to the difficulty of instantiating, in positive terms, a political subject—whether individuals or groups—within the horizontal network form. On the other hand, the same difficulty attends the subjectivity of the network as such. In both cases, it is as if the explicit "signature" of the subject can be given only negatively, through its own withdrawal. This, I suggest, constitutes a *negative signature*.

At another level, the negative signature was the rule rather than the exception in undersigning decisions reached in the global WTI network. As decisions pertain not only to cases where they lead to action, but also where they mandate *not to do* things, it is important to observe the consistency with which an explicit withdrawal in the form of a "no" has power over a "yes" in a network. In other words, within the horizontal network form of the WTI—and arguably in all similar networks—any node saying no has effective power over any node saying yes in deciding collective cases of action. Why would this be the predicament? Given a political inclination toward consensus, a negation has no particular burden of proof beyond the statement of itself to have a decisive bearing in a network deliberation. Concurrently, a positive determination is particularly difficult to ascertain for the whole network, especially in the presence of any given number of objections.

One mediating factor between negative and positive determinations is the presence of silence, or the nonparticipation of certain nodes in network deliberations. In the context of the B*Russell*s Tribunal's request for a "WTI signature" to endorse its letter to AI, a WTI participant finally made explicit the informal and implicit logic of decision making within the network:

> I, too, have a problem with the "WTI signature"—the issue was discussed at large last year around this time and I believe several substantial arguments were put forth for not turning the project [the WTI] into a signature. And if we can still say that "the subject was never

> closed" even after a significant amount of opposition to the idea, I believe that at least what has been going on in the [global e-mail] list in the past year (namely, the lack of enthusiasm with which calls for WTI endorsement of this or that statement, this or that project has received, the lack of response from the majority of the participants of the WTI process to such calls save several people whose names we kept seeing in our inboxes when any such discussion was initiated) has shown us that the subject is closed indeed.

While the absence of a defined set of rules for decision making had once provided enough ambiguity for keeping certain discussions alive in the network, the forceful assertion of silence as a sign of "lack of enthusiasm" for any positive proposal, including the WTI's own future, coupled with the structural advantage of negation over affirmation effectively meant that the subject of the World Tribunal on Iraq, too, was closed by September 2005. No one, including "the WTI" itself, could sign or speak its name.

The experience of the WTI affirms the potentials of a horizontal, nonhierarchical network form of cooperation in facilitating global political action. As the hierarchical party form remained the historical presupposition of the WTI's experiment with a network, the party form provided a background against which the difference of the network was continuously asserted. This acknowledged difference, however, did not constitute a consensus among participants as to what the network form—especially in matters of decision making—required. While the repertoire of experimentation with new forms of global cooperation proliferates, so will the questions raised by such experimentation. To demonstrate the questions the network form raises, I conclude by citing my own participation in the ultimate controversy within the WTI network before its dissolution, the one sparked by the B*Russell*s Tribunal's open letter to Amnesty International:

> in my understanding, the WTI network, neither in its founding meeting in 2003 in istanbul, nor during its two year process has established a set procedure for decision making or for negotiating differences in political judgment. admittedly, this has caused significant "liver and mind" aches, as [another participant] has called it, as well as much uncertainty. perhaps, it has also allowed us to (attempt to) respond in flexible ways to the ever growing urgency in iraq, for example during the first siege of fallujah.

a problem that has continuously emerged in this process, moreover, is the question of the "WTI signature." can the WTI sign a statement, a call to action? the wti is a network—and can networks speak? the wti is a tribunal—and can tribunals speak? numerous divergent views have been expressed on these questions. it is true that we have had no consensus on this subject. but we have also had no consensus on a decision-making process to resolve the lack of consensus. to put it more simply: how do we even decide that any given subject is open or closed? who closes it—and how?

i am not writing these from a sense of obsession with procedure, but because i think how we do some thing is just as important as what we do, especially when the uncertainty over the how prevents us from addressing the substance what, either directly or indirectly. uncertainty over the procedures of any form of organization can be as liberating as impairing, paralyzing, alienating and agitating. i think many of us have experienced these over the past two years.

which brings me to the last point on decision-making: it is not terribly self-evident, at least to me, how a global network can or should make decisions, if at all. does a non-hierarchical network necessarily mean that the network as such has no signature at all? perhaps. does it mean that it should not even attempt to reach any decisions as a network? perhaps. if it decides to make decisions, should the network operate through majority rule or some tools of grassroots democracy such as consensus? and if consensus is preferred, then which among the many varieties of consensus decision making, fit for many people who habitate across the world, should be practiced?

an endless sea of questions, whose answers are not necessarily required for action, as the global wti-network has demonstrated.[13]

CHAPTER 4

"Humanity Must Be Defended"

Habermas in B*Russell*s

Before closing my discussion of the World Tribunal on Iraq, I return to a dramatic cross-examination that took place on April 15, 2004, the first day of the B*Russell*s Tribunal. It is important to focus on this exchange at some length because it demonstrates particularly well the sophistication of the proceedings of the World Tribunal on Iraq (WTI) and crystalizes the diversity of political and philosophical perspectives that came together to form the global antiwar movement and the WTI in its various sessions. Reflecting on this cross-examination at the B*Russell*s Tribunal, I also analyze how and why Jürgen Habermas, the principal philosopher repeatedly referenced there, opposed the occupation of Iraq (2003) in contrast to the North Atlantic Treaty Organization (NATO) intervention in Kosovo (1999), which he had supported. I conclude this chapter by questioning the radical difference Habermasian theorists of cosmopolitan law and order claim exists between "empire's law" and "law's empire."

First, allow me to set the scene of the WTI's inaugurating session in Brussels. It was decided at the WTI's founding meeting in Istanbul that the B*Russell*s Tribunal—spelled intentionally with a double "l" to reference the 1967 Russell Tribunal—would launch the WTI. Accordingly, many participants from various WTI sessions, including myself, were present at the tribunal in Brussels. The B*Russell*s Tribunal opened the evening of April 14, 2004, at an established arts and cultural center, the Beursschouwburg, an institution that

was an active member of the tribunal's "Supporting Platform," composed of diverse elements of Belgian civil society. Throughout two days of proceedings, the Beursschouwburg's many salons were buzzing with activity around video installations, exhibitions, and documentaries curated by the tribunal organizers. Significantly, the Beursschouwburg arts center featured an actual theater where the tribunal's cinematographic stage was set to dramatic effect.

The opening night of the B*Russell*s Tribunal (BT) featured the video projection of an interview with the philosopher Jacques Derrida conducted by Professor Lieven De Cauter, a founder of the BT. This interview—given by Derrida on the occasion of the BT and the founding of the WTI—was entitled "For a Justice to Come" and presented as a "philosophical prologue" to the B*Russell*s Tribunal.[1] In the interview, Derrida applauded the tribunal's "symbolic effectiveness in the public domain" and affirmed that he found it "interesting and necessary." The projection of this interview contributed to the intellectual aura of the BT, an aura that was augmented by the conceptual subject matter that the tribunal evaluated.

In a press release introducing the interview with Derrida, the B*Russell*s Tribunal described itself as: "A commission of inquiry into the 'New Imperial Order,' and more particularly into the Project for A [*sic*] New American Century (PNAC), the neo-conservative think tank that has inspired the Bush government's war logic. The co-signatories of the PNAC 'mission statement' include Dick Cheney, Donald Rumsfeld and Paul Wolfowitz. The programme of this think tank is to promote planetary hegemony on the basis of a supertechnological army, to prevent the emergence of a rival super-power and to take pre-emptive action against all those who threaten American interests."[2] As this statement made unapologetically clear, the organizers of the BT were already convinced, before the tribunal took place, that PNAC and its neoconservative intellectuals had indeed inspired the Bush administration's war logic. Yet, as the legal scholar and WTI activist Başak Ertür observes, Derrida's interview on the occasion of the WTI's constitution makes it clear he wished WTI activists to act *as if* they were conducting a neutral arbitration without what Derrida called a "preliminary positioning."[3]

Nonetheless, the tribunal's "preliminary positioning" was already evident in what I called, in Chapter 1, the *partisan legitimacy* of the WTI, a legitimacy grounded on the global antiwar movement mobilized against the invasion of Iraq. In this way, WTI activists had already, pace Derrida, refused to engage in what Michel Foucault disapprovingly identified as "neutral arbitration in

the realm of the ideal typically instituted by the court-form" (also analyzed in Chapter 1).[4] There was never doubt that the World Tribunal on Iraq was an *anti*war undertaking, despite the fact that in some WTI sessions, like in Brussels, roles were assigned both for "the prosecution" and "the defense."

The fact that WTI activists mobilized a partisan legitimacy did not mean, however, that they did not seek to appear "credible." As summarized by Ertür: "We had to appear 'credible,' certain of ourselves, our facts and our standing. We understood this to mean that we had to conduct the sessions in serenity, solemnly and seriously. It is true that we were 'biased' (i.e. anti-war) but we believed that our bias was legitimized by not only the body of international law, but also the massive global opposition to the war. This claim to legitimacy had to come through in our presentation. So the WTI was, in a sense, a sovereignty-drag of sorts, and we knew that 'serenity' was a crucial part of the make-up."[5] And for this "sovereignty-drag" to appear credible, in addition to serenity, B*Russell*s Tribunal activists resorted to calling on persons of "high moral reputation" during the performance of the tribunal.[6]

One such person selected was Professor François Houtart, a founder of the World Social Forum and a young participant at the Russell Tribunal, now acting as chairman of the B*Russell*s Tribunal's "Commission." This Commission, the tribunal's main body, comprised seven individuals—six of whom, notably, were men. In addition to Houtart, the members included: a professor of international law from Belgium, Pierre Klein; the Marxist author Samir Amin, director of the Third World Forum in Senegal; the Iraqi attorney Sabah Al Mukhtar, president of the Arab Lawyers Association in the United Kingdom; Ludo Abicht, a Belgian philosopher; an Irish diplomat, Dennis Halliday, the former assistant secretary-general of the United Nations and the former UN humanitarian coordinator in Iraq; and the Egyptian novelist and feminist author Nawal El Saadawi.

The Commission was the organ of the tribunal to whom "the prosecution" and "the defense" presented their cases. Seated behind a long table, facing directly the audience, the Commission occupied the center of the theater's cinematographic stage. To their right, and the audience's left, were defense and prosecution counsels seated next to each other at two separate desks. The "witnesses" had their own lectern to the audience's right, facing the defense and the prosecution. At the B*Russell*s Tribunal, the prosecution featured Karen Parker, an international lawyer from the United States, and Jean Bricmont, a professor from Belgium. The defense consisted of two researchers specializing on neoconservatives and US foreign policy: Tom Barry and Jim

Figure 7. B*Russell*s Tribunal in session, with Michael Parenti testifying, Brussels, April 2004. Photo reproduced with permission of the B*Russell*s Tribunal.

Lobe, both associates of the US-based Foreign Policy in Focus, "a think-tank without walls."[7]

The B*Russell*s Tribunal was formally declared in session by the chairman of its Commission on the morning of April 15, 2004. The tribunal's subject of consideration—Project for the New American Century—was quite extraordinary, given that it was a private, neoconservative think tank, albeit an influential one that prided itself as having among its endorsers high-ranking state officials such as Donald Rumsfeld as well as neoconservative intellectuals such as Francis Fukuyama. For this reason (as a participant at the WTI's founding meeting in Istanbul had observed), the B*Russell*s Tribunal was concerned with what could be called an "intellectual crime." To judge this crime properly, the BT had set for itself certain questions. As summarized by the conclusions of the Commission: "The objective of the Tribunal, working as a commission of inquiry, was to establish whether there was a link between PNAC's proposals and the foreign and military strategy of the current US government, and the subsequent invasion and occupation of Iraq."[8] As proclaimed by the BT's dossier for the press, whose interest in the event was tremendous, in relation to PNAC, the B*Russell*s Tribunal would "try to formulate a moral judgment where a legal action is improbable."[9]

On the first day of the B*Russell*s Tribunal, amid TV cameras, journalists, international participants, and the audience, a book edited by the organizers

could be purchased for a few euros. Entitled *Ready For the New Imperial World Order?* its cover carried the logo of the B*Russell*s Tribunal, along with the subtitle "People vs. Total War Incorporated." The book's two-hundred pages consisted of PNAC documents and written "testimonies" submitted ahead of time by witnesses who could not be present in Brussels, including the sociologist Immanuel Wallerstein and the legal scholar Issa Shivji. But most of the witnesses performed in person (and excellent performers, they were) before the B*Russell*s Tribunal. They included the engineer Ghazwan Al Mukhtar who had travelled from Iraq, the Iraqi author in exile Haifa Zangana, and a number of authors and scholars from North America and Europe, including Michael Parenti, Michel Collon, Saul Landau, as well as the legal scholar Amy Bartholomew, whose testimony in Brussels and Istanbul I will examine here.

As a BT document entitled the "Procedure of the Hearing and Mandate of the Commission" stipulated, the B*Russell*s Tribunal, in its considerations, was "not entitled to address strict judicial questions."[10] The role of the defense, too, would "not consist of developing a judicial argument on these questions but rather to attempt to justify the logic that underpins the discourse of the Project for A [*sic*] New American Century." As it turned out, in their defense of the neoconservative political vision, the defense counsels performed so well that the B*Russell*s Tribunal became a breathtaking debate over ideas.

The bulk of the two-day proceedings at the BT was taken up by testimonies of "expert witnesses," questions by members of the Commission, and cross-examination by the counsels on both sides. While the testimonial themes ranged from "The Economic Ties of PNAC with the Petrochemical Industry and the Military-Industrial Complex" to "How Europe Reacts to the Neo-Con Imperial War Policy," the analysis presented by each expert underwent a genuine, spontaneous interrogation that made the audience, as well as those on stage, hang in dramatic suspension. As the audience in the dimly lit, elevated seats of the theater looked down upon the stage perfectly lit for cameras in all four corners, the audience became immersed in the back-and-forth among the witnesses and their examiners.

Outside the black doors of the theater, in the hall's café, the crowd engaged in passionate discussions in multiple languages over coffee and cigarettes, while members of the BT gave seemingly endless interviews to the press in attendance. The local branch of the global Indymedia (IMC) network published a daily paper throughout the tribunal and streamed the proceedings live over the Internet. In the evening, one could watch BT organizers and

participants attending television shows, addressing the Project for the New American Century and the goals of the World Tribunal on Iraq. In downtown Brussels, posters announcing the tribunal were on walls and shop doors everywhere.[11]

The evening of April 17, 2004, at 10:30 p.m., a public declaration of the conclusions of the B*Russell*s Tribunal's Commission took place in the second cultural center supporting the work of the BT, Les Halles De Schaerbeek. While the Commission had taken the whole day for its deliberations, hundreds in the meantime had attended the tribunal's cultural program organized by actors, poets, and students in art schools in Brussels. Presented to the audience and the press in attendance by Dennis Halliday, the former UN humanitarian coordinator for Iraq, the Commission ultimately concluded that "there is evidence of a consistent US strategy, as envisioned by the PNAC report entitled 'Rebuilding America's Defenses,' to establish global domination by military means. Contrary to claims that this domination would be a 'benevolent hegemony,' it is more likely to lead to a state of permanent war."[12]

On the first day of the B*Russell*s Tribunal, a dramatic cross-examination took place after the sophisticated yet contentious testimony given by the legal scholar Amy Bartholomew. This important testimony, "Human Rights as Swords of Empire," was later published by the journal *Socialist Register*, a version of which was also delivered by Bartholomew in the WTI's culminating session in Istanbul.[13] The topic of Bartholomew's testimony was the congruence between neoconservative and liberal arguments supporting the war on Iraq. This troublesome congruence consisted of the fact that the two camps—neoconservatives, as exemplified by PNAC, and what Bartholomew called "liberal hawks," as exemplified by the scholar Michael Ignatieff—both mobilized *cosmopolitan* arguments for the defense of human rights in order to justify regime change and military occupation in Iraq.

As I discuss in detail below, this situation presented a particularly difficult case for activists and scholars waving the flag of cosmopolitanism *against* the war on Iraq, as they found themselves speaking the same language of human rights as the supporters of the war. To make sense of this predicament and rescue cosmopolitan arguments from both neoconservative and liberal supporters of the war, in her testimony, Bartholomew drew on philosopher Jürgen Habermas.[14] In so doing, she reproduced the distinction that Habermas, in response to the war on Iraq, had attempted to introduce between an imperial, unilateral imposition of human rights on the one hand, and a cosmopolitan, multilateral promotion of human rights on the other. Whereas the first

project Bartholomew called "empire's law," the second project she named "law's empire." As her cross-examination at the B*Russell*s Tribunal would reveal, however, the project of "law's empire" advocated by Bartholomew, Habermas, and other theorists of legal cosmopolitanism would *not*, in principle, oppose military interventions in the name of human rights, but seek to clarify the criteria for their legal and legitimate exercise.[15]

Given this situation, a member of the BT's Commission, the Marxist author Samir Amin, examined Bartholomew's testimony to great effect. "Being a citizen of a country of the South," Amin noted, "I can say since five hundred years, we have been suffering from intervention."[16] Advancing his version of anti-imperialism contrary to Bartholomew, Amin proceeded to question the legitimacy of *any* foreign military intervention, including multilateral ones, into sovereign states. One of the prosecutors, Jean Bricmont, too, stepped out of his assigned role on this exceptional occasion, as he interrogated Bartholomew about the political implications of adopting a Habermasian position. In adamant disapproval, Bricmont reminded Bartholomew of the fact that Habermas had supported NATO's military intervention in Kosovo. Because the invasion of Iraq in 2003 and NATO's 1999 war in Kosovo raised questions of a similar kind—both military actions were undertaken in the name of human rights without UN Security Council authorization—Bricmont demanded to know, how did Bartholomew evaluate the cosmopolitan stance of Habermas, which she had so praised?

As Bartholomew's testimony and cross-examination made clear, there were diverse reasons why scores of activists and scholars had opposed the war on Iraq—not all of them would disapprove, in principle, military interventions conducted in the name of humanity. Habermas and Bartholomew herself were a case in point, crystalizing the diversity of political and philosophical perspectives that came together to form the global antiwar movement and the World Tribunal on Iraq. Bartholomew's cross-examination also exposed the difficulty inflicting WTI activists' attempt to formulate a consistent *anti-imperialist* politics, to which they were committed in principle.

In effect, at the B*Russell*s Tribunal, Bartholomew's Habermasian intervention solidified the impasses of a transnational politics of human rights with anti-imperialist commitments. As I demonstrate below, these impasses are particularly difficult to resolve when they concern the virtues of self-determination in relation to the violent universalism of an international law that attempts to govern humanity with the promise of peace and justice. To examine more closely the nature of this impasse, I now turn to Habermas,

whose name was repeatedly pronounced during the B*Russell*s Tribunal. If, as the jurist of international law Costas Douzinas asserts, "the continuous slide of cosmopolitan ideas towards empire is one of the dominant motifs of modernity," I ask further: what is the difference, if any, between *cosmopolitan* and *imperial* arguments supporting military intervention to defend humanity?

"Humanity Must Be Defended"

> After a while, one becomes disgusted with the endless talk about the general—there are exceptions. If they cannot be explained, then neither can the general be explained. Usually the difficulty is not noticed, since the general is not thought with passion, but only with comfortable superficiality. The exception, on the other hand, thinks the general with intense passion.
>
> —Søren Kierkegaard[17]

Jürgen Habermas perceived "jubilant throngs of Iraqis" on April 9, 2003, while "American troops threw a noose round the neck of the dictator" and declared the liberation of Baghdad.[18] The neck circled by the American noose, however, was not the corporeal one of Saddam Hussein, the referent of "the dictator." Instead, in a globally mediatized event, the noose strangled his colossal *monument* and foreshadowed, if not also promised, the noose that would break his living neck for crimes against humanity three years later.

Beginning with Habermas's punctual reflections on this occasion—widely cited and anthologized by the many promulgators of "law's empire"[19]— I will analyze certain anxieties that animated liberal interpretations of the occupation of Iraq. These anxieties, by no means limited to Habermas as will be evident, pertain to various projects of cosmopolitan legal order proposed in the name of global civil society and the protection of universal human rights. Typically, the anxieties I examine assume force in the threshold between the legal and the legitimate, the rule and the exception, the universal and the particular, even as the prior term in each pair lives off of the endeavor to subsume the other.

Habermas commences his reflections on the war on Iraq in a single breath, employing a perplexing conglomeration of vocabularies:

> The matter is simple enough at first glance. A war in violation of international law remains illegal, even if it leads to normatively desirable outcomes. But is this the whole story? Bad consequences can discredit good intentions. Can't good consequences generate their own justifying force after the fact? The mass graves, the underground dungeons, the testimony of the tortured all leave no doubt about the criminal nature of the regime [of Saddam Hussein]. The liberation of a brutalized population from a barbaric regime is a great good; among political goods it is the greatest of all. In this regard, the Iraqis themselves, whether they are currently celebrating, looting, demonstrating against their occupiers, or simply apathetic, contribute to the judgment on the moral nature of the war.[20]

A philosopher whose affirmative claim has been that "normative legality neutralizes the moral and the political,"[21] Habermas's effort to judge the moral nature of the war on Iraq *beyond* a "determination" of international law is testimony to the difficulty he faces. While the war on Iraq was illegal according to Habermas, the difficulty emerges because, at the same time, "the liberation of a brutalized population from a barbaric regime is a great good; among political goods, it is the greatest of all," a liberation which, he intimates, the occupation of Iraq had indeed accomplished.

I shall not dwell on the imperial resonance of this greatest good of "liberation" now, although it must be evident, *that* is the target. I simply underline, while the term "legitimacy" does not explicitly appear in the discourse of Habermas here, the difficult question that haunts him—and not for the first time—is this: *Can an illegal act under international law nevertheless be considered legitimate?* It would be no exaggeration to contend that the legitimacy of Habermas's own oeuvre hangs on this question, given his lifelong promotion of a cosmopolitan order dedicated to "the domestication of state power through international law"[22] and to the procedural legitimation of war through international institutions, particularly, the United Nations Security Council (UNSC).[23]

Except, of course, the exception, namely, his endorsement of NATO's 1999 military intervention in Kosovo, which forcefully resurfaces in his reading of the "liberation" of Iraq.[24] Concerning Kosovo, in an influential article, "Bestiality and Humanity," Habermas had approvingly proclaimed a "western interpretation" that he alleged justified NATO's military mission, despite the fact that it had failed to obtain UNSC authorization:

> They [NATO members] are carrying out a threat of military punishment against Yugoslavia with the announced goal of enforcing liberal conditions for the autonomy of Kosovo within Serbia.[25] From the perspective of the parameters of classical international law, such an action would have constituted meddling in the affairs of a sovereign state, and thus a violation against the prohibition of intervention. According to the premises of the politics of human rights [*Menschenrechtspolitik*], the intervention is said to be an armed peacekeeping mission, (even without a UN mandate implicitly) authorized by the community of nation-states. According to this western interpretation, the war in Kosovo could signify a leap from the classical conception of international law of states to a cosmopolitan law of a global civil society.[26]

Sketching a progressive evolution of "classical international law" since World War II towards an imminent "cosmopolitan law" of global civil society, in this article Habermas legitimated the NATO mission in Kosovo "according to the premises of the politics of human rights." And this politics of human rights, as if it were the Hegelian Spirit in teleological march to realize itself, was "frequently forced to be a mere anticipation of the same prospective legal order that it simultaneously tries to provide."[27]

For Habermas, in other words, the NATO mission in Kosovo was at once legitimated by *and* supposed to accomplish a cosmopolitan legal order yet to subsume, without the mediation of nation states, all of "humanity."[28] If the peculiar ontology of such anticipation required that action be taken as if this cosmopolitan—rather than international—legal order were already realized, still, "the dilemma of having to act as though there were already a fully institutionalized global civil society, the very promotion of which is the intention of the [NATO] action, does not force us to accept the maxim that victims are to be left at the mercy of thugs."[29] Nevertheless, Habermas was careful to assure critics that *only* in states where public authority had eroded or where a state was "held together by authoritarian means" would intervention arrive onto the scene. And if Iraq, ruled by "the dictator" in 2003 (four years after Habermas drew his cosmopolitan amity lines with NATO) was indeed a state of "criminal nature"[30] held together by authoritarian means, did it not also bring a legitimate intervention onto the scene? Before returning to the "liberation" of Iraq, however, I would like to underline how Habermas interpreted the NATO mission in Kosovo as an exception *suspending* the validity of "classical international law" (which allegedly embodies a nonintervention

principle, or else would dictate a UNSC mandate for the legal use of force) on the one hand, and as an exemplary *application* of a cosmopolitan law, albeit one "insufficiently institutionalized" on the other.

Acknowledging the paradoxical conditions under which humanity and its rights were to be defended "if necessary by military means," [31] Habermas asserted that in Kosovo:

> It remains controversial whether the principles of the 1948 genocide convention apply to what is happening on the ground under the dome of the air war. But directly relevant are facts of the case covered under the rubric of "crimes against humanity" which became part of international law as a result of the war crimes trials in Nuremberg and Tokyo. Recently, the Security Council has also been treating these conditions as "threats to peace" justifying compulsory measures under certain conditions. But without a mandate of the Security Council, the interventionary forces in this case can only deduce an authorization to engage in aid from the *erga omnes* binding principles of international law.[32]

Habermas hereby exercises a capacity to identify particular facts of the Kosovo case with those categorically addressed by crimes against humanity (i.e., cosmopolitan law) as he posits a corresponding situation of right for the NATO forces. At first glance, it may appear paradoxical that Habermas, like NATO, is able to draw "facts of the case" into a certain actionable category of cosmopolitan law *before* military action on the one hand, while insisting on the necessity for their "neutral determination" in institutions of law *after* such an action, on the other.

But this may not be a paradox. Note how Habermas also asserts that "the subjects of international law and the trails of blood they have left behind in the history of catastrophes of the twentieth century have led the presumption of innocence in classical international law *ad absurdum*."[33] If the presumption of innocence in international law is now absurd as Habermas claims, is what appears to be a paradox then evidence of a "preemptive use of criminal law to accompany the preemptive use of military force," as the legal scholar Douzinas claims, when he makes the point that like Milosevic, Saddam Hussein was "repeatedly threatened by criminal prosecution *before* the [2003] attack on Iraq"?[34] In my interpretation, though, another problem—more elemental than an opportunistic instrumentalization of law by a given use of force—is at stake.

Walter Benjamin had argued between the two world wars that a modern institution, the police, exercises in spectral mixture "violence for legal ends (in the right of disposition), but with the simultaneous authority to decide these ends itself within wide limits."[35] As such, a fundamental function of police violence is the *assertion* of legal claims as much as their execution.[36] And humanitarian violence, whether advocated in the name of a cosmopolitan law and order based on human rights or simply to address "threats to peace and security" (as Habermas approvingly notes, the distinction between the two tends to blur) has been aptly and evocatively named "police action."[37]

My argument is that humanitarian police action—which Habermas prefers to adjudicate under the term "legal pacifism"—does not make preemptive use of a complete or determinate cosmopolitan law in authoring its violence as much as it establishes and advances the claims of such law, draws "facts" into the domain of law's application, asserts and creates new legal claims, and affirms the validity of cosmopolitan law in practice. This is one reason why the many advocates of "law's empire"[38] both celebrated the proliferation of humanitarian police violence in the 1990s, in particular in Kosovo, *and* labored book by book, article by article, report after report to describe, measure, analyze, and contest the "adequacy" of classical international law in relation to the humanity this violence was said to defend and the liberation it was said to deliver.

Jurist of international law Martti Koskenniemi finds that "most international lawyers approved of the 1999 bombing of Serbia by the members of the North Atlantic alliance," while "most of them also felt that it was not compatible with a strict reading of the UN Charter."[39] How is this situation to be explained? The NATO mission in Kosovo crowned the liberal humanitarian spirit of the 1990s with might, and as was also proposed, with a legitimate, exceptional right *beyond* "existing international law" on its side. It is in this context and against this background, I argue, that the claims of "progressive" international lawyers and cosmopolitan theorists, faced as they were with the occupation of Iraq by another "coalition of the willing," need to be situated. If they celebrated the violation of Yugoslavia's sovereignty in the name of human rights, on what grounds could they oppose a violation of Iraq's sovereignty that, too, was advocated in the name of human rights? This question was integral to the legal and political context of Amy Bartholomew's testimony at the B*russell*s Tribunal, sparking a passionate cross-examination by two intellectuals committed to the principle of nonintervention from an anti-imperialist point of view.

If the strategy of Habermas in his evaluation of the NATO mission in Kosovo was to intimate it as both legal and legitimate in relation to an imminent, cosmopolitan law of human rights and global civil society (with a final caution on his exception, of course: "NATO's self-authorization should not be allowed to become the rule"[40]), then other cosmopolitan strategies for dealing with "the crisis" from the perspective of international law were also proposed. Another example demonstrates liberal anxieties in their assumption of force in the threshold between the legal and the legitimate.

The Independent International Commission on Kosovo, established on the initiative of the Swedish government in cooperation with the United Nations, conglomerated eleven experts, including Hanan Ashrawi, Michael Ignatieff, Mary Kaldor, and the World Tribunal on Iraq's own Richard Falk, who together drafted what came to be known as the "Kosovo Report." After a final seminar addressed by Nelson Mandela, the Commission declared in 2000:[41] "The Commission concludes that *the NATO military intervention was illegal but legitimate*. It was illegal because it did not receive prior approval from the United Nations Security Council. However, the Commission considers that the intervention was justified because all diplomatic avenues had been exhausted and *because the intervention had the effect of liberating* the majority population of Kosovo from a long period of oppression under Serbian rule."[42] The Kosovo Commission faced a similar dilemma as Habermas, given its identical assertion of "the clarity of the moral imperative to act in the face of massive human rights abuse"[43] and its commitment to "liberating" an oppressed population.

Explicitly advocating "going beyond strict ideas of legality to incorporate more flexible views of legitimacy," members of the commission framed the challenge posed by the NATO mission in Kosovo as a function of "peace and security": "The complex of circumstances raises a central question: are the constraints imposed by international law on the non-defensive uses of force adequate for the maintenance of peace and security in the contemporary world? The question is particularly relevant where force is used for the protection of a vulnerable people threatened with catastrophe. If international law no longer provides acceptable guidelines in such a situation, what are the alternatives?"[44] In effect, while commending the NATO mission for its legitimate liberation of Kosovars from Serbian oppression, the Kosovo Commission's argument—in line with cosmopolitan aspirations—proposed to enlarge *the zone of defense as such* to assume as its task the "protection of vulnerable people" and their human rights on a world scale.[45]

In so doing, the Kosovo Commission argued that "the [NATO] intervention laid bare the inadequate state of international law," as it recognized that "there is a standoff between incompatible principles, those of safeguarding the territorial integrity of states and prohibiting non-defensive use of force, versus those seeking to protect the human rights of vulnerable populations within these states."[46] This incompatibility, rendered manifest in the illegality of the NATO mission under existing international law, the commission asserted, was "a troubling fact and one which the necessity and legitimacy of the action cannot conjure away."[47]

In turn, the solution that members of the Kosovo Commission offered involved various strategies to close the gap between legality and legitimacy by subsuming the latter under the former. Among other means to this end, they proposed to insert "respect for human rights" in the first article of the UN Charter, which identifies the institution's purpose. Article I, first sentence, would thus read, "to maintain international peace and security and respect for human rights." However, to the extent that an incompatibility of principles exists between "the territorial integrity of states" and "the protection of human rights," this solution would merely carry such an incompatibility into the heart of the United Nations, unless, as I argue, the goal was to assert the protection of human rights as a constitutional principle of the United Nations that could override the territorial integrity of its members. But more importantly, this solution did not live up to the challenge of the NATO mission as presented by the Kosovo Commission itself. While the commission recognized the NATO mission as a legitimate exception to the legal as embodied by the UN Charter and sought to translate, like Habermas, the *grounds* of the exception (i.e., "maintaining respect for human rights") into legality, it overlooked one fact. The NATO mission acted neither as an agent of the United Nations nor with its authorization. It constituted instead, and this is what needs to be stressed, an alternative "coalition of the willing."

A more ambitious and successful attempt to articulate a principled regime for "human protection purposes" in the aftermath of Kosovo—because it would eventually turn into policy in NATO's 2011 intervention in Libya—was undertaken by the International Commission on Intervention and State Sovereignty (ICIS), which published its influential report, "The Responsibility to Protect," in December 2001. The ICIS was officially constituted and partly financed by the Canadian government, which commissioned twelve experts, including, once again, Michael Ignatieff (former director of the Carr Center for Human Rights at Harvard University, whose endorsement of the war on

Iraq I discuss below), as well as Gareth Evans (former Australian foreign minister and former president of the International Crisis Group).

The aim of the ICIS report on "the responsibility to protect" (R2P) was to draw an authoritative framework specifying the principles and standards of "external military intervention for human protection purposes."[48] Changing the language of a global debate, the responsibility to protect doctrine advanced in this report reformulated military intervention as an *obligation*, in conscious contradistinction to a *right* of intervention.[49] What is remarkable about this formulation is its skillful mobilization of the distinction between an obligation and a right and its resolve to decide the rivalry between the two conceptions of intervention in favor of the former. Notably, while a right may or may not be exercised, the character of an obligation is different: it embodies a moral imperative to *act* and to perform the function of "protection," if necessary with violence.

And who was the addressee, the subject of this obligation to protect? Timothy Garton Ash, historian and recipient of the George Orwell Prize, reminded his readers in March 2011, in the heat of debate about military intervention in Libya: "a decade ago an independent commission that elaborated on the idea of 'the responsibility to protect' spelled out six criteria for deciding whether military action is justified."[50] Ash then specified the six criteria—right authority, just cause, right intention, last resort, proportional means, and reasonable prospects—according to which, he claimed, a military intervention in Libya would not be justified.

As for the nature of the moral imperative presumed by the responsibility to protect, and more specifically, by the criteria for deciding whether a case falls under such an obligation, Garton Ash affirmed that R2P's criteria are "essentially a modernized version of centuries-old Catholic standards for 'just war.'" It is important to reflect on this finding—confirmed by many other scholars and practitioners—because it makes explicit the politico-theological foundations of a cosmopolitan morality that takes "life," for instance, especially civil human life, to be a *sacred* possession, or an "inalienable" right demanding protection. Another reason for reflecting on essentially theological standards is that the apparent *secularity* (and hence "modernity") of the paradigms of universal justice, law, and order proposed for governing, administering, and defending humanity should be questioned.

Notably, the anthropologist Talal Asad addresses this problem. Asad does not merely trace the genealogy of contemporary humanitarian law back to medieval Christian theology and its just war principles of necessity and

proportionality. He also comments at length on how the specific significance attributed to concepts such as *intention*, *penance*, and *remorse* in the context of an evolving medieval Christian theology can today find expression in the regretful apologies expressed by secular liberals for the unnecessary and disproportionate killings of "innocents" in war.[51] Within the framework of this theology, as well as contemporary humanitarian law (it is worth repeating), certain killings of persons are endorsed in principle, as necessary and proportionate to the ends pursued by a just or legal war. Operating within this very humanitarian logic, the Responsibility to Protect, as language, doctrine, and practice, is a recent and particularly powerful example of what Asad calls "the etiquette of death dealing."

At the dawn of the twenty-first century, then, NATO's mission in Kosovo constituted nothing less than a summit for the revival of "just war" theories in relation to the human, her rights and liberation.[52] What is more, with or against the conscience and cautions of the jurists and the philosophers, NATO's 1999 mission to liberate Kosovars from Serbian oppression was in fact employed as a precedent[53] by subsequent coalitions of the willing and their advocates when they claimed to liberate Iraqis from Saddam Hussein's tyranny in 2003 and Libyans from Gaddafi's in 2011.

By granting legitimacy to NATO *as* a "coalition of the willing," Habermas, members of the Kosovo Commission, and the ICIS carved a legitimate (when not also legal) zone of action *outside* the United Nations and its monopoly of decision over the legal use of violence in global affairs. In the words of the Kosovo Commission: "International law on these matters [of intervention] is not yet settled, and the fluidity caused by competing doctrines generates controversy and uncertainty. In these settings, 'coalitions of the willing' provide a subsidiary source of protection for a beleaguered people that cannot summon a response from the UN System, but this in turn creates a concern about the loosening of legal restraints on war and intervention." With this concern, if "most NATO supporters among international jurists presented the intervention as an unfortunate but necessary and reasonable exception," members of the Kosovo Commission and the ICIS, through the Responsibility to Protect doctrine, went further to systematize the exception into a "principled regime" for the global enforcement of human rights.[54]

"Nor does a comparison with the intervention in Kosovo offer an excuse,"[55] found Habermas in the case of the war on Iraq, as he attempted to refute efforts to redeem what he deemed to be "the irredeemable."[56] The kernel of his declaration of the irredeemability of the Iraq war, however, was the

alleged unilateralism of the war, let it be underscored, and *not* its politics of human rights and liberation: "Wolfowitz is not Kissinger. He is a revolutionary, not a cynical technician of political power. . . . What distinguishes neoconservatives from the 'realist' school of international relations is the vision of an American global political order that has definitely broken with the reformist program of UN human rights policies. *While not betraying liberal goals*, this vision is shattering the civil limits that the UN Charter—with good reason—had placed on their realization."[57] Remarkably, although Habermas was willing to ignore, in the case of Kosovo, such limits placed on the realization of liberal goals—in defense of *that* coalition of the willing called NATO—he sentenced the next coalition, also led by the United States, to an utter impossibility of redemption. And he did so by positing a "remarkable difference" that had allegedly begun to emerge already over Kosovo between "the continental European and the Anglo-American powers over strategies for justifying military action."[58]

Whereas continental Europeans saw armed intervention "as a means for making progress toward fully institutionalized [cosmopolitan] civil rights," Habermas claimed, conversely, Anglo-American powers "satisfied themselves with the normative goal of promulgating their own liberal order."[59] Whereas continental Europeans stood for international law, "George W. Bush's decision to consult the Security Council certainly didn't arise from any wish for legitimation through international law."[60] Thus Habermas empowered himself to frame "the crucial issue of dissent": "whether justification through international law can, and should, be replaced by the unilateral, world-ordering politics of a self-appointed hegemon."[61] Note that Habermas posited a "remarkable difference" between the two parties—continental Europeans and Anglo-Americans—neither in terms of the substance of their ends (cosmopolitan and liberal), nor in terms of their means (military intervention), but in terms of *the procedural strategy of justification* of military violence.

Certainly, in the cases of Kosovo and Iraq, the military mission of both coalitions of the willing was "world-ordering" and self-appointed. But even more certainly, one coalition of the willing was neither more nor less unilateral than the other, *unless* one was prepared to assert with Habermas in 2003 that "*above all, however, the American superpower's self-proclaimed role of trustee runs up against the objections of its own allies, who remain unconvinced* on good normative grounds of its paternalistic claim to unilateral leadership."[62] With this assertion—and recollecting Habermas's earlier proclamation of a unified "western interpretation" of the legitimacy of the NATO mission

in Kosovo—the unilateralism at stake proves itself to be nothing more than a function of the "normative dissent [that] has divided the West itself."[63] In other words, it was the unilateralism of the Anglo-American powers qua the rest of "the West" that was the kernel of Habermas's objection to the "liberating" occupation of Iraq.

It is in this light that other passages by Habermas—often cited by cosmopolitan promulgators of "law's empire" in contradistinction and alleged resistance to "empire's law"—should be interpreted.[64] In these passages, Habermas introduces a series of distinctions, conglomerating on one side Emmanuel Kant's cosmopolitanism, multilateral will formation and *egalitarian universalism*, and on the other side, John Stuart Mill's liberal nationalism, hegemonic unilateralism, and *imperialist universalism*. Not surprisingly, where the politics of continental Europeans corresponds to the former set, that of Anglo-Americans embodies the latter.

In a widely cited passage, also used by Bartholomew in her testimony before the World Tribunal on Iraq, Habermas asserts:

> There was a time when liberal nationalism saw itself justified in promulgating the universal values of its own liberal order, with military force if necessary, throughout the entire world. This arrogance does not become any more tolerable when it is transferred from nation-states to a single hegemonic state. It is precisely the universalistic core of democracy and human rights that forbids their unilateral realization at gunpoint.[65] The universal validity claim that commits the West to its "basic values," that is to the procedure of democratic self-determination and the vocabulary of human rights, must not be confused with the imperialist claim that the political form of life and the culture of a particular democracy—even the oldest one—is exemplary for all societies.[66]

Hereby it remains unclear how human rights advocates of the NATO mission in Kosovo (in alleged difference from the case of Iraq) did *not* arrogate themselves to imposing universal values at the gunpoint of military force.[67] Consider two sentences from the "Kosovo Report": "Kosovars must realize that the international community did not intervene to turn Kosovo over to another [Albanian] ethnic majority tyranny. By its intervention, the international community won the right to insist that an independent Kosovo must accord equal rights to all the peoples."[68]

Still, the distinction Habermas posits between "the universal validity claim" that commits the West to its own basic values such as human rights on the one hand, and "the imperialist claim," on the other, is well worth careful consideration. How sustainable is this distinction? Habermas continues rapidly, and with little specification: "The 'universalism' of the old empires was of this sort, perceiving the world beyond the distant horizon of its borders only from the centralizing perspective of its own worldview. Modern self-understanding, by contrast, has been shaped by an egalitarian universalism that requires a decentralization of one's own perspective. It demands that one relativize one's own views to the interpretive perspectives of equally situated and equally entitled others."[69] Yet, I insist, the condition of possibility—indeed the very claim—of the cosmopolitan law and order Habermas advocates is predicated on the universalism allegedly characteristic of old empires. This is the case because Habermasian cosmopolitan law assumes and propagates for itself the force and *centralizing* perspective of a "neutral party" deciding over a set of allegedly equal others, even as it lacks any mechanism whatsoever to decenter and relativize its own perspective.

The jurist Koskenniemi asserts that Habermas reserves, in matters of world order, "a special status for rule-systems and rule-applying institutions against unmediated moral truths," whereby it is precisely the "claims of law" that "decenter one's own position, that imply parity between legal subjects and an unbiased 'third party' that will decide." Concluding his reflections, Koskenniemi then locates the weakness of Habermas's approach in the fact that "there is no agreement on what the correct—'unbiased,' 'external'—procedure is."[70] While this is true, it is not the whole story. I must also ask, who or what, if anything, will decenter the law's decentering center?

In fact, rarely explored is the *identity* of "the universalism of old empires," in Habermas's own terms, with the universalism of law's empire. Instead, a series of adjectives are typically inserted to qualify the propagated universalism in its alleged difference from the universalism of old empires. Where one proposes a "critical universalism,"[71] another posits a "secular"[72] or a "true"[73] or a "genuine"[74] or an "open"[75] one, while yet others concur with Habermas on the distinguishing title of "egalitarian universalism." It is rarely suggested that an imperial conclusion or *consequence* may follow from a supremacy that is latent in universalism as such, a supremacy adjectives aim and fail to disqualify.[76] In other words, I argue, the imperial record of the universal cannot be fully accounted for by the particular (rather than the "truly universal") interests, perspectives, and politics that are said to enlist the universal in bad faith,

dishonesty, or cunning. What is more, even if "egalitarian universalism" is theoretically granted to the perturbed relativization of one's own perspective through international law as Habermas and his followers argue, they still fail to demonstrate *how, or in which sense*, a military mission authorized through international law manifests a relativization of the perspective—of either the military mission or of international law—qua the "interpretation" of others who remain antagonistic to and attacked by such missions.

But Habermas should be allowed to return to the particular instance of Iraq in concluding his universal discussion, perhaps in response to a similar question: "If thousands of Shi'ites in Nasiriya [in Iraq] demonstrate in equal measure against both Saddam and the American occupation, they express the truth that non-Western cultures must appropriate the universalistic content of human rights from their own resources and their own interpretation, one that will construct a convincing connection to local experiences and interests."[77] Hereby disappear altogether the vocabularies of "normative dissent" and good normative grounds for being unconvinced by paternalistic claims, as well as any reference to "multilateral will-formation." Enter instead Shi'ites as an example of the generic category, "non-Western cultures,"[78] whose antagonistic demonstration merely manifests the truth of non-Western cultures as local appropriators of a universalistic content.

This observation requires one last word from and on Habermas in order to draw a conclusion from his cosmopolitan considerations concerning the "liberation" of Iraq: "For half a century the United States could count as the peacemaker on this cosmopolitan path. With the war on Iraq, it has not only abandoned this role; it has also given up its role as guarantor of international rights. . . . Let us have no illusions: the normative authority of the United States of America lies in ruins."[79] In the eyes of "equally situated others" who may not have waited with flowers at the end of this cosmopolitan path paved by the peaceful precision of conventional and unconventional weapons, the illusions alluded to by Habermas may never have taken hold; while the monument whose fall from a pedestal Habermas takes pains to interpret may, in the end, very well belong to a once blessed peacemaker.

The Singular Case of Empire: Law's Empire and Empire's Law

In August 2007, two years after the World Tribunal on Iraq declared its judgment in Istanbul, political scientist Michael Ignatieff pleaded guilty as charged. Writing for the *New York Times Magazine*, he admitted, "the unfolding catastrophe in Iraq has condemned the political judgment of a president [George W. Bush]. But it has also condemned the judgment of many others, myself included, who as commentators supported the invasion."[80] In fact, Ignatieff—a liberal "human rights hawk" as the legal scholar Bartholomew would label him at WTI sessions in Brussels and Istanbul—was a passionate supporter of the war on Iraq and a distinguished ideologue of the war's revolutionary claim to liberate Iraqis from Saddam Hussein's tyrannical rule.

Before the war had begun, in the pages of the same magazine, Ignatieff had called the imminent war a "noble" endeavor "to create democracy in Iraq."[81] And a few days after the initiation of the war, he confidently asserted, "the problem is not that overthrowing Saddam by force is 'morally unjustified.' Who seriously believes 25 million Iraqis would not be better off if Saddam were overthrown?"[82] Consistently, throughout his public writings, Ignatieff justified the war on Iraq through its desirable, expected consequences, which he repeatedly asserted to be "improving the human rights of 25 million people."[83]

A year after the invasion, Ignatieff would reminisce about the "liberal internationalism" he had supported throughout the 1990s, evidenced by his approval of the NATO intervention in Kosovo, which now seemed to him "child's play" in contrast to the gamble in Iraq: "So I supported an administration whose intentions I didn't trust, believing the consequences would repay the gamble."[84] Needless to say, it was not Ignatieff who would pay the price of this gamble to "improve human rights" in Iraq, but the Iraqis themselves, who, at the time of writing, continue to live in an unfolding catastrophe, fifteen years after the invasion of their country.

In the World Tribunal on Iraq's final session, when Bartholomew discussed "human-rights hawks" who gave "crucial support to the project of undermining legitimate legality as a medium of regulation," she had in mind not Habermas but British Prime Minister Tony Blair and "liberal public intellectuals like Michael Ignatieff": "Espousing their humanitarian concern and their cosmopolitan moral solidarity, the human-rights hawks gave crucial support to the project both of undermining legitimate legality as a medium of

regulation—international and otherwise—and of turning it into 'Empire's Law,' a form of rule that is deeply at odds with the post–World War II project of globalizing its obverse, that is 'law's empire.' "[85] Where liberal intellectuals such as Ignatieff propagated empire's law, to Bartholomew's mind, other liberals like Habermas stood for its *obverse*, law's empire. But how sustainable was this distinction between empire's law and law's empire?

To begin with, contrary to Bartholomew's claim, when "liberal hawks" such as Ignatieff supported the war on Iraq in the name of human rights, they were not departing from but rather *drawing on* "the previous decade's innovations in legitimizing (if not legalizing) humanitarian intervention and 'humanitarian wars,' aimed, at least ostensibly, at the protection of peoples from massive abuses of human rights."[86] Moreover, as Thomas Cushman, former editor of the *Journal of Human Rights* finds, the stance of liberal intellectuals and activists who supported both the intervention in Kosovo and the war on Iraq on human rights grounds was "logically consistent."[87] Nevertheless, such an interpretation was foreclosed to Bartholomew and other scholars who instead wanted to assert a "remarkable difference" between a *cosmopolitan* "law's empire" on the one hand and an *imperialist* "empire's law" on the other.

This attempt at differentiation was consistent indeed with cosmopolitan promotions of a "global rule of law" that have tended to tell the story of international law as an epic struggle against the formation of an "American empire" and also against imperialism as such. According to Bartholomew's testimony at the WTI, "while the earlier, post–World War II project of extending 'law's empire' was responsible for developing regimes of human rights and international law and foreshadowing (albeit highly imperfectly) a future order of democratic cosmopolitan law, 'Empire's law' seeks precisely to derail that project and to do so unilaterally."[88] In such promotional narratives of law's empire—which knows not colonialism but only self-determining postcolonial states—law's empire begins to emerge in the span of a few years in the mid-1940s through the establishment of the United Nations and its Security Council, the Nuremberg-Tokyo Tribunals, and the Universal Declaration of Human Rights. Yet typically omitted from this narrative are the North Atlantic Treaty Organization, the International Monetary Fund, and the World Bank, to name a few contemporaneous legal creations.[89] From then on, law's empire takes credit not merely for championing decolonization and national self-determination, but also for promoting universal human rights.[90]

As the jurist of international law Peter Fitzpatrick observes, "in the genealogies of the trade, the imperial constitution of international law is a matter

of the past, for now the impelling power within international law comes solely from nation-states freed of imperial carapace."[91] Indeed, instead of a critical perspective that would acknowledge the historical constitution of intentional law through imperial encounters, proponents of legal cosmopolitanism have promoted an understanding of international law as essentially anti-colonial and anti-imperial. And yet, international jurists such as Antony Anghie have told a completely different story of international law, which places its intimate relationship with imperialism at the center of scholarly inquiry.

In a seminal work, Anghie explores and exposes the colonial origins of the sovereignty doctrine, the foundational concept of his discipline, international law.[92] If the historical path to the modern global states system "lies not through the widening interaction of pre-exiting sovereignties, but rather through the construction of the greatest colonial *empires* the world had ever seen,"[93] then this historical path involved an international jurisprudence in which, as Anghie demonstrates, certain societies were consistently rendered sovereign against others seen as "lacking in sovereignty—or at best partially sovereign."[94] In fact, throughout history, various standards have been formulated and applied in deciding the sovereign status of any given entity. While international lawyers developed "the standard of civilization" in the nineteenth century to discriminate sovereign from non-sovereign or quasi-sovereign entities in the context of colonization,[95] in the twenty-first century, countless practitioners and theorists have specified and elaborated "universal standards" that entities such as Yugoslavia, Iraq, or Libya should meet if their sovereign status is to be affirmed by the international community.[96] Some cosmopolitans are less humble and project their vocation as the articulation of "universal principles which must shape and limit *all human activity*": these universal principles are thus the designation of "necessary boundaries which no human activity should cross."[97] In the cosmopolitan case, what must be administered are not merely the standards sovereign *states* must adhere to, but "the proper limits to human diversity" as such, in David Held's enthusiastic cosmopolitan formulation.[98]

Anghie observes that the traditional preoccupation of international law with the question of "how order is created among sovereign states"—and this question's counterpart in international relations theory would be "the problematic of anarchy"[99]—can neither give an account of, nor properly take into account, how the sovereignty doctrine itself was "generated by problems relating to the colonial order."[100] Given this situation, the legacy of the colonial foundations of international law occasions, for Anghie, a decided doubt about

"whether a discipline whose fundamental concepts, 'sovereignty' and 'law,' had been so explicitly and clearly formulated in ways which embodied within them the distinctions and discriminations which furthered colonialism could be readily reformed by the simple expedient of excising or reformulating the offending terminology."[101] But how could this situation be reformed at all, if as Anghie continues, "there seems to be an *inherent reflex* in international law which conceals the colonial past on which its entire structure is based"?[102]

Significantly, this concealing "inherent reflex" in international law is enacted by some of Anghie's own claims. For one, Anghie finds that "the argument that the nineteenth century has now been superseded by the discipline may be supported by the extent to which international law is now open and cosmopolitan" and that "international law, after all, promoted the process of decolonization by formulating doctrines of self-determination where once it formulated doctrines of annexation and *terra nullius*."[103] In my reading, these assertions are *the* crux of the "inherent reflex" in international law persuasively identified by Anghie, and identified as a problem. I would like to ask, beyond polemics: Did international law promote doctrines of self-determination independently of or in resistance to, in spite of, or through imperialism? This question is especially crucial if the case is indeed that "for many people in the Third World—imperialism has never ceased to be a major governing principle of the international system"[104]—*despite* the emergence of doctrines of self-determination and an "open and cosmopolitan" international law.[105]

But asserting such a "despite" to qualify these two elements—self-determination and the extent of an open and cosmopolitan international law—in their relation to imperialism presumes a peculiar relationality whose character needs to be revealed instead. For his part, Anghie argues: "Human rights law is revolutionary because it purports to regulate the behavior of a sovereign within its own territory. The emergence of Third World societies, as independent sovereign states, was simultaneous with the creation of human rights law, which significantly conditioned the character of this sovereignty."[106] If this is the case, I now ask: How does the *simultaneous* emergence of independent postcolonial states and human rights law—which, Anghie argues, "significantly conditioned" Third World sovereignty—relate to his earlier claim that the civilizing mission of nineteenth-century international law may have been superseded to the extent that international law is now more cosmopolitan?

The problem is that Anghie posits the emergent cosmopolitan law of human rights at once as an articulator of imperialism, which conditions

"Third World sovereignty," *and* as the marker of a possible supersession of this imperialism.[107] However, this does not contradict Anghie's thorough analysis to the extent that he subscribes to a particular understanding of how imperialism operates in the twenty-first century. In fact, Anghie concludes his seminal work with the finding that "the 'new' form of Empire that Hardt and Negri describe co-exists with very old forms of empire."[108] What is this new form of empire of which Anghie speaks?

Michael Hardt and Antonio Negri's own seminal work, *Empire*, argues that the globalization of economic and social relations is coupled with the emergence of a supranational political sovereignty: now, they assert, a properly global capital tends to meet a global, supranational form of political power.[109] This supranational form of power, which they call "imperial sovereignty," is legitimated through the universalism of human rights, arguments predicated on just war theories, calls for and practices of humanitarian intervention, and political valorizations of the "effectiveness" of global police action in resolving conflicts. In the field of international law and institutions, according to Hardt and Negri, the International Criminal Court (ICC) and the emergence of global trade and business laws point toward the emergence of a supranational sovereignty. The constitution of supranational imperial sovereignty further marks the emergence of a "postimperialist" era, in which no single nation-state, including the United States, is capable of functioning as the center of the new world order.[110] Rather, imperial sovereignty operates through a network form of power—a cooperative yet hierarchical web of global administration and command, a pyramid whereby the United States remains at the top—which links all nation-states, international institutions such as the United Nations, the International Monetary Fund, the World Bank, G-8, and the World Trade Organization, transnational corporations, and benevolent non-governmental organizations under a new global paradigm of rule. In this situation, "not even the United States can 'go it alone' and maintain global order without collaborating with other major powers in the network of Empire."[111]

But what if the United States is interested not in maintaining the "multilateral" order of empire along with its supranational tendencies (as exemplified by NATO's humanitarian mission in Kosovo) but in creating "unilaterally" another one at the cost of a supranational empire? I insist that this is what Habermas, Bartholomew, and other cosmopolitan theorists lamented in the occupation of Iraq: the displacement of a supranational empire by an Ameri-

can empire. They mourned the alleged displacement of a *universal* "law's empire" by an *American* "empire's law."[112]

Writing in the aftermath of Iraq's occupation, Hardt and Negri further posit the concept of exception as a central category for understanding the current "state of global war" and the contemporary relation between war and politics.[113] They argue that the project of modern (theories of) state sovereignty was to end civil war, isolate war at the margins of society, and limit it to relations between sovereign states and to exceptional times: in the past, "*war was a limited state of exception*," they claim.[114] The historical account presented by other scholars—including Richard Tuck, Antony Anghie, Justin Rosenberg, and China Miéville—of European sovereignty's emergence, however, demonstrates a contrary history. War was *never* "a limited state of exception" in relation to and from the perspective of the colonized in modernity—it was the rule. Yet, Hardt and Negri claim that only "today," in the passage to postmodernity through the formation of a new sovereignty at the supranational level, that "*the state of exception has become permanent and general*; the exception has become the rule."[115] Insofar as the authors, in rather circular logic, cite their own contestable theoretical positions as evidence of the novelty of this situation, one must ask—in the spirit of Walter Benjamin, from within "the tradition of the oppressed" across historical time and global space[116]—how is that *only now*, war and the state of exception are the rule?

Perchance, with the weight and wisdom of a similar tradition, Hardt and Negri avow this question, yet quickly dismiss it through the figures of Mao Zedong and Antonio Gramsci: "these theorists, however, were dealing with exceptional social periods."[117] Nonetheless, a consideration of the relation between exception and rule in colonial history challenges Hardt and Negri's exceptionalization of the situation "today," including their twin position that the two US exceptionalisms—its assertion of exceptional republican virtue *and* its "relatively new" exception from the law—are "distinct and incompatible."[118] The historical anthropologist Ann Stoler and the legal scholar Nehal Bhuta, read together, present a contrary situation: myriad examples, I suggest, not only of the compatibility between, but more importantly, of the facilitation effected by concurrent assertions of exceptional republican virtue on the one hand and practices of exception in relation to the law on the other.[119]

Moreover, the analysis offered by Anghie confirms the historical permanence of a state of exception in the case of international law. Anghie provides a productive illustration:

> Sovereignty may be likened to . . . a domestic constitution which, while regulating everyday political and economic affairs, also contains within itself the special powers required to deal with states of emergency. *International law is in a permanent state of emergency*; it could not be otherwise, over the centuries, given that international law has endlessly reached out towards universality, expanding, confronting, including and suppressing the different societies and people it encountered. At the peripheries, then, sovereignty was continuously demarcating and policing these boundaries, applying and reinventing the emergency powers which incorporated, excluded and normalized the uncivilized, hence enabling conventional sovereignty to appear to operate unperturbed, stable and following its own course.[120]

While the agency Anghie attributes to "sovereignty" is peculiar in this passage ("sovereignty was . . . demarcating and policing"), other jurists have suggested a relation more fundamental than "likeness" between sovereignty and what Anghie designates as "the special powers required to deal with states of emergency." For Carl Schmitt, the capacity to decide on the exception and determine a state of emergency (coupled with the parallel capacity to establish a "normal situation" that would not present such a case) is the exclusive marker of sovereignty.[121]

Whether or not one subscribes to such a definition of sovereignty, what emerges clearly from Anghie's account of the making of international law is the *permanent* exercise of emergency powers to bring under control—culturally, politically, economically, legally, humanely, violently—all that is encountered in the periphery, with the complementary crowning of "normal" cases. Otherwise stated, it is through a permanent state of exception that law's empire "extends itself horizontally, to encompass the entire globe and, once that is achieved, vertically, within each society, to ensure the emergence of civilized states."[122] It is in the context of this permanent exercise of emergency powers, I argue, that for cosmopolitan advocates of law's empire, the liberation of Iraq by a "coalition of the willing" presented a decisive case, a case whose identity with or difference from earlier exceptions had to be asserted.

When presenting her testimony at the World Tribunal on Iraq in Istanbul, one such advocate, Amy Bartholomew, it will be recalled, argued that the war on Iraq represented not a case of law's empire, but "its obverse," a case of empire's law. Yet, a historically situated analysis—including of the positions taken by Habermas—does not support a sustainable distinction between law's

empire and empire's law. Nevertheless, it is the very assertion of this distinction, nay, this obverse-ness, which allowed such advocates of law's empire and "the global rule of law" to take central stage in the antiwar movement that developed in response to the war on Iraq (unlike the case of Kosovo).

Significantly, this claim of an obverse relation between law's empire and empire's law is facilitated by the assertion of a "radical difference" that is said to exist between the paradigms of war and policing. This "radical difference" is advanced by cosmopolitan theorists who propose that the violence of police action serves the *enforcement of law* and is, as such, distinct from the violence of war. In his assessment of September 11, 2001, David Held, a theorist of cosmopolitanism, finds, for example, that "the terrorist violence was . . . a crime against America and against humanity; a massive breach of many of the core codes of international law; and an attack on the fundamental principles of freedom, justice and humanity itself."[123] Accordingly, Held argues:

> *there must be a commitment to the rule of law not the prosecution of war.* Civilians of all faiths and nationalities need protection, wherever they live, and terrorists must be captured and brought before an international criminal court, which could be either permanent or modeled on the Nuremberg or Yugoslav war crimes tribunals. The terrorists must be treated as criminals and not glamorized as military adversaries. This does not preclude internationally sanctioned military action under the auspices of the United Nations both to arrest suspects and to dismantle terrorist networks—not at all. *But such action should always be understood as a robust form of policing, above all as a way of protecting civilians* and bringing criminals to trial.[124]

In other words, Held claims that humanity, "of all faiths and nationalities," must be defended, and defended not through *war*, but through international law and the violence of its *policing*.

When celebrating the establishment of principles and criteria for "cosmopolitan policing," cosmopolitan theorist Robert Fine cites another such theorist, Mary Kaldor, a member of the Kosovo Commission I addressed earlier. He asserts that "cosmopolitan writers have addressed how 'cosmopolitan minded militaries' should differ from conventional state-based militaries: 'Whereas the soldier, as the legitimate bearer of arms, had to be prepared to die for his country, the international soldier/policemen risks his or her life for humanity.'"[125] Both Kaldor and Fine forget to add, however, when they

observe this "sacrifice" and its requirements of mind, that such "policemen" are to be prepared not only to *die* but also to *kill* for humanity.

Within the same framework of dying and killing, political sociologist Craig Calhoun, too, laments in regards to September 11, "the military rather than law enforcement solutions to crime." "One need be no friend of terrorism to be sorry," he adds, "that the dominant response to the terrorist attacks has been framed as a matter of war, rather than crime, an attack on America, rather than humanity. What could have been an occasion for renewing the drive to establish an international criminal court and multilateral institutions needed for law enforcement quickly became an occasion for America to demonstrate its power."[126] Calhoun regrets, in other words, the missed opportunity to extend, through violence, the law of humanity (rather than of "America"). And that, "of course," would constitute not war, but policing in the name of humanity, whence, in the words of Habermas, "crimes against humanity would not be treated and dealt with according to directly moral standards, but like criminal acts in a state justice system."[127] All of these cosmopolitan proposals correspond to a sovereign violence (whether called war or policing) exercised on behalf of humanity and its defense.

Having introduced the ostensibly obverse couple—law's empire and empire's law—in refuting human rights arguments offered in support of Iraq's occupation, Bartholomew, too, mobilized the asserted difference between war and policing when making her case before the World Tribunal on Iraq in Istanbul: "But even if we accept the importance of showing cosmopolitan moral solidarity and confronting the 'manifold practices of evil,'[128] as I think we must, one does not have to belabor the obvious: . . . It *is crystal clear* that the war waged against Iraq was never a "humanitarian war," and neither has the occupation been a humanitarian and transformative one.[129] . . . Both the officially declared but illegal war and the occupation have been *light-years away* from the sort of liberal policing, rather than military, model that would have to animate any truly humanitarian intervention."[130] Herewith, Bartholomew asserted the policing model as a means of law's empire and its "truly humanitarian" interventions, in contradistinction to war as a tool of empire's law and what must be its false humanitarianism. But what measure, if any, can account for the light-years she thus placed between the two sets of violence exercised by law's empire and empire's law? To belabor the not so obvious: what is the difference, if any, between *imperial* mobilizations of human rights as a justification for military action and *cosmopolitan* ones?

Political scientist Jean Cohen proffers to have an answer. She offers a tour

de force of cosmopolitan scholars concerned with the status of sovereignty in international law, as she explores the prime possibility that they "risk becoming apologists for imperial projects."[131] While the phraseology of law's empire is absent in Cohen's account, it is replaced by the notion of a "global rule of law," which she just as forcefully and explicitly asserts as a "counterproject to empire."[132] In a telling statement, Cohen, too, presents an either/or option: "we really face only two choices today: strengthened international law or imperial projects by existing and future superpowers."[133]

Cohen's solution to the risk incurred by cosmopolitan scholars of becoming apologists for imperial projects requires close reading. Cosmopolitan schemes, she argues, tend to "abandon" what she claims to be international law's "core principles of sovereign equality, territorial integrity, nonintervention, and domestic jurisdiction." Given this predicament, she advances her version of the required approach: "On this approach (my own), legal cosmopolitanism is potentially linked to a project radically distinct from empire and pure power politics—namely, the democratization of international relations and the updating of international law. This requires the strengthening of supranational institutions, formal legal reform, and the creation of a global rule of law that protects both the sovereign equality of states based on a revised conception of sovereignty and human rights." The key to Cohen's ostensibly new version of legal cosmopolitanism—which is to be "distinct from empire"—is not doing away with state sovereignty, but *redefining* its requirements, privileges, and parameters toward an "updated" international law. While defending human rights, a global rule of law is to protect the sovereign equality of states, yet "based on a revised conception of sovereignty."[134]

And what would require such an update in international law? Cohen finds that "of course, the conception of what are the prerogatives of sovereignty has changed."[135] Such changes, she infers, "should drive the international community to define more clearly where states are to remain immune from outside interference."[136] This redefined conception of sovereignty to be devised by "the international community," she continues, must consider that "sovereign equality and human rights are *both* new and indispensable principles; in international relations, both are based on what Jürgen Habermas has called egalitarian universalism, and they can become complementary if the attempt is made in good faith to make new distinctions and update the rules of the international legal order accordingly."[137] The historical account of the making of international law offered by Anghie confirms indeed that "sovereign

equality" is a *new* principle to the extent that it is only recently found to be applicable to formerly colonized societies. Recall also Anghie's observation that the global applicability of sovereign equality emerged simultaneously with the development of human rights in international law, whence the latter immediately came to "condition" Third World sovereignty.

While the approach proposed by Cohen undoubtedly could be read within this emergent tradition of human rights–based conditioning of Third World sovereignty, I wish to register another point. Considering Anghie's entire analysis of the colonial foundations, structures, and dynamics of international law, far from a new approach, Cohen's proposal to update international law through a "revised conception of sovereignty" turns out to be the oldest approach in the world when it comes to those societies whose sovereignty has always been in question. Moreover, as Anghie's account of international law demonstrates, it is often attempts made in "good faith" to make distinctions *within* paradigms of universalism—whether "egalitarian" or "imperial," as Cohen, too, posits this Habermasian difference—that have justified the violence of international law.

So what is to be done, for and by whom? In their assessment of the global multitude's increasing mobilization of the discourses of human rights, war crimes, crimes against humanity, and of its grievances centering on the ICC, Hardt and Negri observe that while the ICC "indicates the possibility of a global system of justice that serves to protect the rights of all equally," by the bare fact that the United States and other powerful nation-states maintain the (legal, one must add) power to negate legal actions, "one is brought back to earth."[138] Further, as "the imperial constitution is based ever more on 'the right of intervention' and human rights are imposed militarily, the function of imperial tribunes has become ever more ambiguous."[139] The authors conclude "in any case" that the imperial legal frameworks and structures "tend not to promote the rights and justice that are subject of the protests, but on the contrary pose further obstacles to them."[140] If so, one can ask, how can the global multitude relate to the imperial legal framework, or law's empire, in another parlance?

Surprisingly, Hardt and Negri suggest that "one logical proposal would be" to extend the project of the International Criminal Court, "giving it global jurisdiction and enforcement powers, perhaps tied to the United Nations."[141] Although this conclusion is consistent with the authors' claim that today "what matters" is that any particular reform proposal "enters into the constituent process" and that "there is no conflict here between reform and

revolution,"[142] one is left undecided whether the constituent process in question concerns empire or the democratic project of the multitude that is supposed to "go beyond" imperial sovereignty. If "the multitude today needs to abolish sovereignty at a global level,"[143] unfortunately the authors fail to explain how contributing to the constitution of imperial sovereignty, or "law's empire," will accomplish this goal.

Ultimately what indeed matter are the experiments of and the conclusions drawn by "the multitude" in praxis—such as, I submit, the World Tribunal on Iraq. In the aftermath of the violent "liberation" of Kosovo, Iraq, and Libya by the United States and its allies, my own judgment agrees with the case presented by the scholar Issa Shivji at the World Tribunal on Iraq's final session in Istanbul: "It is no more a question of double standards or not matching deeds with words. Rather, the very 'word' is wanting. The law and its premises, the liberal values underlying law, the Law's Empire itself needs to be interrogated and overturned."[144] Perhaps then, less violent and necessary may be acting for the love of humanity.[145]

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Afterword

1. The World Tribunal on Iraq (WTI) created a global public platform where the invasion and occupation of Iraq could be collectively judged.

2. The WTI attempted the impossible. It appealed to "the collective conscience of humanity," where it located the source of its own authority.

3. The WTI was a performance that produced reality. It acquired as much truth as people perceived in it. It made "the news" whenever it managed to take root, wherever antiwar movements were strong.

4. The WTI spoke in multiple tongues. Among ethics, law, and politics, it worked through translation.

5. The WTI's horizontality enabled the participation of all in its consensus decision making. Its network form of organization provided a partial means for resolving differences in temperament and judgment.

6. The WTI was not an event, but a multitude in action, a manifestation. It lasted as long as it acted. It constituted itself publicly among analogous struggles of the past and future. It took part in a tradition.

7. As a labor of love, the WTI risked paternalism. It was too pleased with the participation of Iraqis in its processes as mere witnesses to their own suffering.

8. The WTI used the language of international law when it found the war on Iraq illegal. Yet its opposition to the war went deeper than questions

of legality and illegality. When it declared the war illegitimate, it signified more.

9. The WTI had the audacity to question the authority of international law and its compromised institutions. It was correct in predicting perpetual war as a consequence of Iraq's occupation by the United States, the United Kingdom, and their allies.

10. The WTI was conducted from the perspective of humanity, for the love of humanity. This was its animating energy, its strength, its weakness.

APPENDIX 1

World Tribunal on Iraq: The Platform Text

—October 29, 2003, Istanbul

Origins of the Project

The idea of organising an international tribunal against the invasion of Iraq originated nearly simultaneously in several places around the world. It was discussed and in principle supported at Anti-War Meetings during 2003 in Berlin, Jakarta and Geneva, Paris and Cancun. The Jakarta Peace Consensus declared on May 25th, 2003 its commitment to the realisation of an international war crimes tribunal. The proposal was also discussed at the Networking Conference (European Network for Peace and Human Rights) organised by the Bertrand Russell Peace Foundation in Brussels on June 26/27th 2003, and the idea was broadly supported at that meeting.

The working group meeting in Brussels discussed the idea and possibilities of convening an international tribunal to investigate and establish the crimes perpetrated against the people of Iraq and humanity. It was decided that it would consist of several hearings around the world, each of them focusing on different aspects of this war and the strategies behind it. The tribunal platform from Turkey was entrusted with the task of acting as the secretariat and the clearing house, and carrying out the coordination in close contact with the groups in Brussels, Hiroshima, New York, London and other cities. This international Coordinating Committee convened a meeting in

Istanbul on October 27–29th 2003 to decide the concept, form and aims of the project.

The Legitimacy of the Project

A war of aggression was launched despite the opposition of people and governments all over the world. However, there is no court or authority that will judge the acts of the US and its allies. If the official authorities fail, then authority derived from universal morals and human rights principles can speak for the world.

Our legitimacy derives from:

- the failure of official international institutions to hold accountable those who committed grave international crimes and constitute a continued menace to world peace;
- being part of the worldwide anti-war movement which expressed its opposition to this invasion;
- the Iraqi people resisting occupation;
- the duty of all people of conscience to take action against wars of aggression, war crimes, crimes against humanity and other breaches of international law;
- the struggles of the past to develop systems of peaceful co-existence and prevent future aggression and breaches of the UN Charter;
- giving voice to the voiceless victims of this war, articulating the concerns of civil society as expressed by the worldwide social justice and peace movements;
- the will to bring the principles of international law to the forefront.

Further, our legitimacy will be earned as we proceed to achieve the aims stated in this document.

The Tasks of the Tribunal

The first task of the tribunal is to investigate the crimes committed by the US government in launching the Iraq war. In spite of a world movement

condemning this war and its clear violations of international law, the US government forced its premeditated war strategy upon the world. Moreover the US-government demands impunity and continues to put itself above all international laws and conventions.

The second task is to investigate allegations of war crimes during the aggression, crimes against laws of occupation, humanitarian law and crimes against humanity, including genocide. Such an inquiry may include the sanctions imposed against Iraq and the use of illegal weapons which kill over generations, such as depleted uranium.

The third task is the investigation and exposure of the New Imperial World Order. The tribunal would therefore consider the broader context of the doctrines of "pre-emptive war" and "preventive war" and all the consequences of those doctrines: "benevolent hegemony", "full spectrum dominance" and "multiple simultaneous theatre wars" . . . As part of this process, some hearings will investigate the vast economic interests involved in this rationalized war-logic.

The tribunal, after having examined reports and documentary evidence and having listened to witnesses (Iraqi and international victims and various experts), will reach a decision.

The Aims

In organising this International Tribunal we pursue four fundamental aims.

- To establish the facts about what happened in Iraq and to inform the public about the crimes against peace, war crimes and crimes during the occupation, about the real goals behind this war and the dangers of this War logic for world peace. It is especially important to break the web of lies promulgated by the war-coalition and its imbedded press.
- To continue and strengthen the mobilisation of the peace movement and the global anti-war protest. It is intended that the tribunal will not be an academic endeavour but will be backed by a strong international network. Anti-war and peace movements, which carried out the big mass movements against the attack on Iraq have in principle adopted the idea of indicting the aggressors and of setting up a campaign to support the Tribunal process.
- The tribunal is to be considered a continuing process. The investigation

of what happened in Iraq is of prime importance to restore truth and preserve collective memory against the constant rewriting of history. We are challenging the silence of international institutions and seeking to put them under pressure to fulfill their obligations under international law. In judging the recent past our aim is to prevent illegal wars in the future. During this process the tribunal can formulate recommendations on international law and expand notions of justice and ethical-political awareness. It can contribute to providing alternatives to 'victors' justice' and give a voice to the victims of the war. In doing so, we support the demands by world public opinion and the Iraqi people to end the occupation and restore Iraqi sovereignty.

- The International Tribunal initiative seeks to be part of a broader movement to stop the establishment of the new imperial world order as a permanent 'state of exception' with constant wars as one of its main tools. The Tribunal can bring a moral, political and judicial judgment that contributes to build a world of peace and justice.

Form of the Tribunal

The general plan is to hold an independent world tribunal with: associated events, associated commissions of inquiry, commissions of investigation, hearings and specific issue tribunal sessions in various countries, culminating in a final tribunal session in Istanbul. As for now, there will be hearings in Brussels and Hiroshima. At the moment other proposals for sites of hearings include New York, Copenhagen, Munich and Mexico. Associated events will be held in London—*Legal Inquiry into the Invasion and Military Occupation of Iraq*—and at the WSF in Mumbai—*World Court on War as Crime*. The ICTI (International Criminal Tribunal for Iraq) of Japan that is now preparing for trials and public hearings of Iraq tribunal throughout Japan and various Asian countries is a partner in the World Tribunal on Iraq and will contribute to the final trial of WTI in Istanbul with all its findings and achievements.

Being confronted with the paradox that we want to end impunity but we do not have the enforcement power to do so, we have to follow a middle way between mere political protest and academic symposiums without any judicial ambition on the one hand, and on the other hand, procedural trials of which the outcome is known beforehand. This paradox implies that we are just citizens and therefore have no right to judge in a strict judicial way and

have at the same time the duty as citizens to oppose criminal and war policies, which should be our starting point and our strength.

Although these commissions of inquiry will be working in conformity with an overall concept that will apply to the whole tribunal (spelled out in the Charter), the hearings will also have some autonomy concerning format. By approaching the Iraq case from as many angles as possible (international law, geopolitical and economical analysis), we strengthen our common objective to end impunity and resist the imperial wars. In this way the hearings will mutually enforce each other and all the findings will be brought together in the final session in Istanbul.

In order to be as inclusive as possible, we will support and recognize endeavours to resist impunity. The project will endorse and support the efforts to bring national authorities and warmakers to national courts (like the complaints filed in various state courts under the doctrine of Universal Jurisdiction) and to international courts (like the International Criminal Court in the Hague).

Timing

The core series of hearings will start on Wednesday April 14th 2004 in Brussels and end in a final tribunal session in Istanbul that will start on March 20th 2005, the second anniversary of the start of the war in Iraq. These will be preceded by intensive inquiries, networking and campaigning.

Appeal to the National and International Movements

We address an appeal to all organizations and individuals to support this project. We invite organizations to endorse and participate at various levels. They could:

1. Undertake to organize a hearing or an associated event.
2. Host a hearing.
3. Contribute by contacts, names of people who would qualify to take part in the various components of the tribunal and make initial contacts with those people.
4. Contribute names & contacts of persons and organizations of experts who are already researching various aspects of the crimes and violations in question.
5. Undertake to prepare certain reports and make them available for the use of the tribunal.
6. Build a web page in as many languages as possible and see that information is timely posted.
7. Undertake to organize a local campaign in support of the tribunal.
8. Contribute financially towards meeting the expenses involved in realizing this tribunal.

We endorse the initiative of the World Tribunal on Iraq

Name: …… Country: ……

Email: ……

I sign in my personal name O I sign in name of my organisation O

Organisation: ……

Send back to: info@worldtribunal.org; iraq-tribunal@lists.riseup.net

APPENDIX 2

Declaration of the Jury of Conscience of the World Tribunal on Iraq

—June 23–27, 2005, Istanbul

In February 2003, weeks before an illegal war was initiated against Iraq, millions of people protested in the streets of the world. That call went unheeded. No international institution had the courage or conscience to stand up to the threat of aggression of the US and UK governments. No one could stop them. It is two years later now. Iraq has been invaded, occupied, and devastated. The attack on Iraq is an attack on justice, on liberty, on our safety, on our future, on us all. We, people of conscience, decided to stand up. We formed the World Tribunal on Iraq (WTI) to demand justice and a peaceful future.

The legitimacy of the World Tribunal on Iraq is located in the collective conscience of humanity. This, the Istanbul session of the WTI, is the culmination of a series of 20 hearings held in different cities of the world focusing on the illegal invasion and occupation of Iraq. The conclusions of these sessions and/or inquiries held in Barcelona, Brussels, Copenhagen, Genoa, Hiroshima, Istanbul, Lisbon, London, Mumbai, New York, Östersund, Paris, Rome, Seoul, Stockholm, Tunis, various cities in Japan and Germany are appended to this Declaration in a separate volume.

We, the Jury of Conscience, from 10 different countries, met in Istanbul. We heard 54 testimonies from a Panel of Advocates and Witnesses who came from across the world, including from Iraq, the United States and the United Kingdom.

The World Tribunal on Iraq met in Istanbul from 24–26 June 2005. The principal objective of the WTI is to tell and disseminate the truth about the

Iraq War, underscoring the accountability of those responsible and underlining the significance of justice for the Iraqi people.

I. Overview of Findings

1. The invasion and occupation of Iraq was and is illegal. The reasons given by the US and UK governments for the invasion and occupation of Iraq in March 2003 have proven to be false. Much evidence supports the conclusion that a major motive for the war was to control and dominate the Middle East and its vast reserves of oil as a part of the US drive for global hegemony.
2. Blatant falsehoods about the presence of weapons of mass destruction in Iraq and a link between Al Qaeda terrorism and the Saddam Hussein régime were manufactured in order to create public support for a "preemptive" assault upon a sovereign independent nation.
3. Iraq has been under siege for years. The imposition of severe inhumane economic sanctions on 6 August 1990, the establishment of no-fly zones in the Northern and Southern parts of Iraq, and the concomitant bombing of the country were all aimed at degrading and weakening Iraq's human and material resources and capacities in order to facilitate its subsequent invasion and occupation. In this enterprise the US and British leaderships had the benefit of a complicit UN Security Council.
4. In pursuit of their agenda of empire, the Bush and Blair governments blatantly ignored the massive opposition to the war expressed by millions of people around the world. They embarked upon one of the most unjust, immoral, and cowardly wars in history.
5. Established international political-legal mechanisms have failed to prevent this attack and to hold the perpetrators accountable. The impunity that the US government and its allies enjoy has created a serious international crisis that questions the import and significance of international law, of human rights covenants and of the ability of international institutions including the United Nations to address the crisis with any degree of authority or dignity.
6. The US/UK occupation of Iraq of the last 27 months has led to the destruction and devastation of the Iraqi state and society. Law and order have broken down, resulting in a pervasive lack of human

security. The physical infrastructure is in shambles; the health care delivery system is in poor condition; the education system has virtually ceased to function; there is massive environmental and ecological devastation; and the cultural and archeological heritage of the Iraqi people has been desecrated.

7. The occupation has intentionally exacerbated ethnic, sectarian and religious divisions in Iraqi society, with the aim of undermining Iraq's identity and integrity as a nation. This is in keeping with the familiar imperial policy of divide and rule. Moreover, it has facilitated rising levels of violence against women, increased gender oppression and reinforced patriarchy.
8. The imposition of the UN sanctions in 1990 caused untold suffering and thousands of deaths. The situation has worsened after the occupation. At least 100,000 civilians have been killed; 60,000 are being held in US custody in inhumane conditions, without charges; thousands have disappeared; and torture has become routine.
9. The illegal privatization, deregulation, and liberalization of the Iraqi economy by the occupation regime has coerced the country into becoming a client economy that is controlled by the IMF and the World Bank, both of which are integral to the Washington Consensus. The occupying forces have also acquired control over Iraq's oil reserves.
10. Any law or institution created under the aegis of occupation is devoid of both legal and moral authority. The recently concluded election, the Constituent Assembly, the current government, and the drafting committee for the Constitution are therefore all illegitimate.
11. There is widespread opposition to the occupation. Political, social, and civil resistance through peaceful means is subjected to repression by the occupying forces. It is the occupation and its brutality that has provoked a strong armed resistance and certain acts of desperation. By the principles embodied in the UN Charter and in international law, the popular national resistance to the occupation is legitimate and justified. It deserves the support of people everywhere who care for justice and freedom.

II. Charges

On the basis of the preceding findings and recalling the Charter of the United Nations and other legal documents indicated in the appendix, the jury has established the following charges.

A. Against the Governments of the US and the UK

1. Planning, preparing, and waging the supreme crime of a war of aggression in contravention of the United Nations Charter and the Nuremberg Principles.

   Evidence for this can be found in the leaked Downing Street Memo of 23rd July, 2002, in which it was revealed: "Military action was now seen as inevitable. Bush wanted to remove Saddam through military action, justified by the conjunction of terrorism and WMD. But the intelligence and facts were being fixed around the policy." Intelligence was manufactured to willfully deceive the people of the US, the UK, and their elected representatives.
2. Targeting the civilian population of Iraq and civilian infrastructure by intentionally directing attacks upon civilians and hospitals, medical centers, residential neighborhoods, electricity stations, and water purification facilities. The complete destruction of the city of Falluja in itself constitutes a glaring example of such crimes.
3. Using disproportionate force and weapon systems with indiscriminate effects, such as cluster munitions, incendiary bombs, depleted uranium (DU), and chemical weapons. Detailed evidence was presented to the Tribunal by expert witnesses that leukemia had risen sharply in children under the age of five residing in those areas that had been targeted by DU weapons.
4. Using DU munitions in spite of all the warnings presented by scientists and war veterans on their devastating long-term effects on human beings and the environment. The US Administration, claiming lack of scientifically established proof of the harmful effects of DU, decided to risk the lives of millions for several generations rather than discontinue its use on account of the potential risks. This alone displays the Administration's wanton disregard for human life. The Tribunal heard testimony concerning the current obstruction by the US Administration of the efforts of Iraqi universities to collect data and conduct research on the issue.

5. Failing to safeguard the lives of civilians during military activities and during the occupation period thereafter. This is evidenced, for example, by "shock and awe" bombing techniques and the conduct of occupying forces at checkpoints.
6. Actively creating conditions under which the status of Iraqi women has seriously been degraded, contrary to the repeated claims of the leaders of the coalition forces. Women's freedom of movement has severely been limited, restricting their access to the public sphere, to education, livelihood, political and social engagement. Testimony was provided that sexual violence and sex trafficking have increased since the occupation of Iraq began.
7. Using deadly violence against peaceful protestors, including the April 2003 killing of more than a dozen peaceful protestors in Falluja.
8. Imposing punishments without charge or trial, including collective punishment, on the people of Iraq. Repeated testimonies pointed to "snatch and grab" operations, disappearances and assassinations.
9. Subjecting Iraqi soldiers and civilians to torture and cruel, inhuman, or degrading treatment. Degrading treatment includes subjecting Iraqi soldiers and civilians to acts of racial, ethnic, religious, and gender discrimination, as well as denying Iraqi soldiers Prisoner of War status as required by the Geneva Conventions. Abundant testimony was provided of unlawful arrests and detentions, without due process of law. Well known and egregious examples of torture and cruel and inhuman treatment occurred in Abu Ghraib prison as well as in Mosul, Camp Bucca, and Basra. The employment of mercenaries and private contractors to carry out torture has served to undermine accountability.
10. Re-writing the laws of a country that has been illegally invaded and occupied, in violation of international covenants on the responsibilities of occupying powers, in order to amass illegal profits (through such measures as Order 39, signed by L. Paul Bremer III for the Coalition Provisional Authority, which allows foreign investors to buy and take-over Iraq's state-owned enterprises and to repatriate 100 percent of their profits and assets at any point) and to control Iraq's oil. Evidence was presented of a number of corporations that had profited from such transactions.
11. Willfully devastating the environment, contaminating it by depleted uranium (DU) weapons, combined with the plumes from burning oil

wells, as well as huge oil spills, and destroying agricultural lands. Deliberately disrupting the water and waste removal systems, in a manner verging on biological-chemical warfare. Failing to prevent the looting and dispersal of radioactive material from nuclear sites. Extensive documentation is available on air and water pollution, land degradation, and radioactive pollution.

12. Failing to protect humanity's rich archaeological and cultural heritage in Iraq by allowing the looting of museums and established historical sites and positioning military bases in culturally and archeologically sensitive locations. This took place despite prior warnings from UNESCO and Iraqi museum officials.
13. Obstructing the right to information, including the censoring of Iraqi media, such as newspapers (e.g., al-Hawza, al-Mashriq, and al-Mustaqila) and radio stations (Baghdad Radio), the shutting down of the Baghdad offices of Al Jazeera Television, targeting international journalists, imprisoning and killing academics, intellectuals and scientists.
14. Redefining torture in violation of international law, to allow use of torture and illegal detentions, including holding more than 500 people at Guantánamo Bay without charging them or allowing them any access to legal protection, and using "extraordinary renditions" to send people to be tortured in other countries known to commit human rights abuses and torture prisoners.
15. Committing a crime against peace by violating the will of the global anti-war movement. In an unprecedented display of public conscience millions of people across the world stood in opposition to the imminent attack on Iraq. The attack rendered them effectively voiceless. This amounts to a declaration by the US government and its allies to millions of people that their voices can be ignored, suppressed and silenced with complete impunity.
16. Engaging in policies to wage permanent war on sovereign nations. Syria and Iran have already been declared as potential targets. In declaring a "global war on terror," the US government has given itself the exclusive right to use aggressive military force against any target of its choosing. Ethnic and religious hostilities are being fueled in different parts of the world. The US occupation of Iraq has further emboldened the Israeli occupation in Palestine and increased the repression of the Palestinian people. The focus on state security and the escalation of militarization

has caused a serious deterioration of human security and civil rights across the world.

B. Against the Security Council of the United Nations

1. Failing to protect the Iraqi people against the crime of aggression.
2. Imposing harsh economic sanctions on Iraq, despite knowledge that sanctions were directly contributing to the massive loss of civilian lives and harming innocent civilians.
3. Allowing the United States and United Kingdom to carry out illegal bombings in the no-fly zones, using false pretenses of enforcing UN resolutions, and at no point allowing discussion in the Security Council of this violation, and thereby being complicit and responsible for loss of civilian life and destruction of Iraqi infrastructure.
4. Allowing the United States to dominate the United Nations and hold itself above any accountability by other member nations.
5. Failure to stop war crimes and crimes against humanity by the United States and its coalition partners in Iraq.
6. Failure to hold the United States and its coalition partners accountable for violations of international law during the invasion and occupation, giving official sanction to the occupation and therefore, both by acts of commission and acts of omission becoming a collaborator in an illegal occupation.

C. Against the Governments of the Coalition of the Willing

Collaborating in the invasion and occupation of Iraq, thus sharing responsibility in the crimes committed.

D. Against the Governments of Other Countries

Allowing the use of military bases and air space, and providing other logistical support, for the invasion and occupation, and hence being complicit in the crimes committed.

E. Against the Private Corporations Which Have Won Contracts for the Reconstruction of Iraq and Which Have Sued for and Received "Reparation Awards" from the Illegal Occupation Regime

Profiting from the war with complicity in the crimes described above, of invasion and occupation.

F. Against the Major Corporate Media

1. Disseminating the deliberate falsehoods spread by the governments of the US and the UK and failing to adequately investigate this misinformation, even in the face of abundant evidence to the contrary. Among the corporate media houses that bear special responsibility for promoting the lies about Iraq's weapons of mass destruction, we name the New York Times, in particular their reporter Judith Miller, whose main source was on the payroll of the CIA. We also name Fox News, CNN, NBC, CBS, ABC, the BBC and ITN. This list also includes but is not limited to, The Express, The Sun, The Observer and Washington Post.
2. Failing to report the atrocities being committed against Iraqi people by the occupying forces, neglecting the duty to give privilege and dignity to voices of suffering and marginalizing the global voices for peace and justice.
3. Failing to report fairly on the ongoing occupation; silencing and discrediting dissenting voices and failing to adequately report on the full national costs and consequences of the invasion and occupation of Iraq; disseminating the propaganda of the occupation regime that seeks to justify the continuation of its presence in Iraq on false grounds.
4. Inciting an ideological climate of fear, racism, xenophobia and Islamophobia, which is then used to justify and legitimize violence perpetrated by the armies of the occupying regime.
5. Disseminating an ideology that glorifies masculinity and combat, while normalizing war as a policy choice.
6. Complicity in the waging of an aggressive war and perpetuating a regime of occupation that is widely regarded as guilty of war crimes and crimes against humanity.
7. Enabling, through the validation and dissemination of disinformation, the fraudulent misappropriation of human and financial resources for an illegal war waged on false pretexts.
8. Promoting corporate-military perspectives on "security" which are counter-productive to the fundamental concerns and priorities of the global population and have seriously endangered civilian populations.

III. Recommendations

Recognizing the right of the Iraqi people to resist the illegal occupation of their country and to develop independent institutions, and affirming that the right to resist the occupation is the right to wage a struggle for self-determination, freedom, and independence as derived from the Charter of the United Nations, we the Jury of Conscience declare our solidarity with the people of Iraq.

We recommend:

1. The immediate and unconditional withdrawal of the Coalition forces from Iraq.
2. That Coalition governments make war reparations and pay compensation to Iraq for the humanitarian, economic, ecological, and cultural devastation they have caused by their illegal invasion and occupation.
3. That all laws, contracts, treaties, and institutions established under occupation, which the Iraqi people deem inimical to their interests, be considered null and void.
4. That the Guantánamo Bay prison and all other offshore US military prisons be closed immediately, that the names of the prisoners be disclosed, that they receive POW status, and receive due process.
5. That there be an exhaustive investigation of those responsible for the crime of aggression, war crimes and crimes against humanity in Iraq, beginning with George W. Bush, President of the United States of America, Tony Blair, Prime Minister of the United Kingdom, those in key decision-making positions in these countries and in the Coalition of the Willing, those in the military chain-of-command who masterminded the strategy for and carried out this criminal war, starting from the very top and going down; as well as personalities in Iraq who helped prepare this illegal invasion and supported the occupiers.

   We list some of the most obvious names to be included in such investigation:

- prime ministers of the Coalition of the Willing, such as Junichiro Koizumi of Japan, Jose Maria Anzar of Spain, Silvio Berlusconi of Italy, José Manuel Durão Barroso and Santana Lopes of Portugal, Roh Moo Hyun of South Korea, Anders Fogh Rasmussen of Denmark;

- public officials such as Dick Cheney, Donald H. Rumsfeld, Paul Wolfowitz, Colin L. Powell, Condoleezza Rice, Richard Perle, Douglas Feith, Alberto Gonzales, L. Paul Bremer from the US, and Jack Straw, Geoffrey Hoon, John Reid, Adam Ingram from the UK;
- military commanders beginning with: Gen. Richard Myers, Gen. Tommy Franks, Gen. John P. Abizaid, Gen. Ricardo S. Sanchez, Gen. Thomas Metz, Gen. John R. Vines, Gen. George Casey from the US; Gen. Mike Jackson, Gen. John Kiszely, Air Marshal Brian Burridge, Gen. Peter Wall, Rear Admiral David Snelson, Gen. Robin Brims, Air Vice-Marshal Glenn Torpy from the UK; and chiefs of staff and commanding officers of all coalition countries with troops in Iraq.
- Iraqi collaborators such as Ahmed Chalabi, Iyad Allawi, Abdul Aziz Al Hakim, Gen. Abdul Qader Mohammed Jassem Mohan, among others.

6. That a process of accountability is initiated to hold those morally and personally responsible for their participation in this illegal war, such as journalists who deliberately lied, corporate media outlets that promoted racial, ethnic and religious hatred, and CEOs of multinational corporations that profited from this war;
7. That people throughout the world launch nonviolent actions against US and UK corporations that directly profit from this war. Examples of such corporations include Halliburton, Bechtel, The Carlyle Group, CACI Inc., Titan Corporation, Kellog, Brown and Root (subsidiary of Halliburton), DynCorp, Boeing, ExxonMobil, Texaco, British Petroleum. The following companies have sued Iraq and received "reparation awards": Toys R Us, Kentucky Fried Chicken, Shell, Nestlé, Pepsi, Phillip Morris, Sheraton, Mobil. Such actions may take the form of direct actions such as shutting down their offices, consumer boycotts, and pressure on shareholders to divest.
8. That young people and soldiers act on conscientious objection and refuse to enlist and participate in an illegal war. Also, that countries provide conscientious objectors with political asylum.
9. That the international campaign for dismantling all US military bases abroad be reinforced.
10. That people around the world resist and reject any effort by any of their governments to provide material, logistical, or moral support to the occupation of Iraq.

We, the Jury of Conscience, hope that the scope and specificity of these recommendations will lay the groundwork for a world in which international institutions will be shaped and reshaped by the will of people and not by fear and self-interest, where journalists and intellectuals will not remain mute, where the will of the people of the world will be central, and human security will prevail over state security and corporate profits.

Arundhati Roy, India, Spokesperson of the Jury of Conscience
Ahmet Öztürk, Turkey
Ayse Erzan, Turkey
Chandra Muzaffar, Malaysia
David Krieger, US
Eve Ensler, US
François Houtart, Belgium
Jae-Bok Kim, South Korea
Mehmet Tarhan, Turkey
Miguel Angel de los Santos Cruz, Mexico
Murat Belge, Turkey
Rela Mazali, Israel
Salaam al-Jobourie, Iraq
Taty Almeida, Argentina

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APPENDIX 3

List of World Tribunal on Iraq Sessions

London, November 2003

Mumbai, January 2004, by El Taller

London, February 2004, by INLAP, Peacerights, and CND

Copenhagen, March 2004

Brussels, April 2004

New York, May 2004

Germany, June 2004

Istanbul, June 2004

New York, August 2004, by International Action Center

Japan, October 2004

Stockholm, November 2004

Japan, 2004, Series of sessions held throughout the year in different cities.

Seoul, December 2004

Rome, December 2004

Frankfurt, January 2005

Rome, February 2005

Lisbon, March 2005

Genoa, March 2005

Barcelona, May 2005

Istanbul, June 2005

The findings of the following have also been incorporated into the WTI process: International Uranium Weapons Conference, Hamburg, October 2003; Spanish Tribunal against the Iraq War, May 2003; Costa Rican Tribunal, September 2003.

Source: Müge G. Sökmen, ed., *World Tribunal on Iraq: Making the Case Against War* (Northampton: Olive Branch Press, 2008).

NOTES

Introduction

1. On this day, millions protested simultaneously in about eight hundred cities and sixty countries across the world. See Stefaan Walgrave and Dieter Rucht, "Introduction," in *The World Says No to War: Demonstrations Against the War on Iraq*, ed. Stefaan Walgrave and Dieter Rucht (Minnesota: University of Minnesota Press, 2010), xiii. For a conservative estimate of the demonstration's extensiveness, see BBC News, "Millions Join Global Anti-War Protests," *BBC World Edition*, February 17, 2003, http://news.bbc.co.uk/2/hi/europe/2765215.stm.

2. John Berger's words of endorsement for the World Tribunal on Iraq (WTI) were used in the publicity material for the tribunal and eventually printed in the program booklet of the WTI's culminating session in Istanbul. On file with the author.

3. Constituted under the auspice of the British philosopher Bertrand Russell, the Russell Tribunal was conducted in 1967 to investigate and judge war crimes committed by the United States during the invasion in Vietnam. Members of the Russell Tribunal included the American author James Baldwin, French philosophers Jean-Paul Sartre and Simone de Beauvoir, as well as the leader of the Workers Party of Turkey (TIP), Mehmet Ali Aybar, whose participation in the Russell Tribunal helped keep its memory alive among the Left in Turkey. See further, Arthur J. Klinghoffer and Judith A. Klinghoffer, *International Citizens' Tribunals: Mobilizing Public Opinion to Advance Human Rights* (New York: Palgrave, 2002).

4. For the "Declaration of the Jury of Conscience of the World Tribunal on Iraq," see Appendix 2, and the volume of the WTI's Istanbul proceedings published as Müge G. Sökmen, ed., *World Tribunal on Iraq: Making the Case Against War* (Northampton, MA: Olive Branch Press, 2008), 492–502. Reprints also available in other books and on the Internet. See Anthony Arnove, *Iraq: The Logic of Withdrawal* (New York: New Press, 2006); and Richard Falk, Irene Gendzier, and Robert J. Lifton, eds., *Crimes of War: Iraq* (New York: Nation Books, 2006).

5. "Vicdan Mahkemesi Kararini Açikladi: Bush ve Blair Suçlu," *Akşam Gazetesi*, June 28, 2005.

6. My transnational fieldwork with the WTI began in New York City, where I lived during the eight months it took to organize the May 2004 session of the tribunal there. From the first day to the last, I participated in all aspects of the preparations for the WTI's New York session. Subsequently, I moved to Istanbul in January 2005 for eight months to conduct fieldwork and partake in the production of the WTI's culminating session there (June 2005). While traveling to Japan, India, and Belgium to partake in WTI sessions, my fieldwork also involved participation in the WTI's founding meeting in Istanbul (October 2003) and in international coordination

meetings held in Paris (November 2003) and Istanbul (March 2005). I also participated in the WTI network's local and global deliberations over its multiple electronic listservs. That I was fluent in both English and Turkish facilitated my fieldwork with the WTI over its two-year existence.

7. While Craig Borowiak recognizes that the "obscurity" surrounding the WTI "is surely in part due to the ideological commitments of the mainstream media that refused to cover [the WTI]," he nonetheless asserts, "the partisanship of the WTI may have also contributed to the obscurity by making it easier for skeptical publics to dismiss the evidence and findings." The latter assertion cannot, however, account for the *mainstream* media reception of the WTI in Turkey and the Middle East. The "partisanship" of the WTI did not constitute an identical problem everywhere, if one considers particular publics, instead of an unmarked "general public" who allegedly dismisses civil society tribunals for rhetoric that "is typically inflammatory." See Borowiak, "The World Tribunal on Iraq: Citizens' Tribunals and the Struggle for Accountability," *New Political Science* 2 (2008): 184.

8. For the English version, see Sökmen, *World Tribunal on Iraq*.

9. For the coverage of the WTI by the grassroots satellite network Deep Dish TV, see the four-hour documentary, Brian Drolet and DeeDee Halleck, producers, *World Tribunal on Iraq. Final Session: Istanbul* (2005). Another documentary, focused less on the testimonies and more on the WTI activists, is Zeynep Dadak et al., producers, *For the Record: World Tribunal on Iraq* (2007).

10. The proper name for "civil society tribunals" is contested. In their survey of the phenomena, Arthur and Judith Klinghoffer employ the name of "international citizens' tribunals." See Klinghoffer and Klinghoffer, *International Citizens' Tribunals.* Alternatively, Jayan Nayar—a scholar of law and organizer of the WTI's Rome session on "media wrongs"—uses the term "people's tribunals," subsuming the WTI under his paradigm of "peoples' law." See Jayan Nayar, "Taking Empire Seriously: Empire's Law, Peoples' Law and the World Tribunal on Iraq," in *Empire's Law: the American Imperial Project and the "War to Remake the World*," ed. Amy Bartholomew (London: Pluto Press, 2006), 1. Political scientist Borowiak also prefers "international citizens' tribunals" and contends that the title of "people's tribunals" connotes a nonexistent, organic sense of community and "is too easily associated with legacies of fascist and vigilante people's courts." See Borowiak, "World Tribunal on Iraq," 165. Evaluating the WTI as a form of "reclaimative justice," Janet C. Gerson uses the term "global civil society tribunal." See Janet C. Gerson, "Public Deliberation on Global Justice: the World Tribunal on Iraq" (PhD diss., Columbia University, 2014). Along with some WTI participants, I prefer to employ the name "civil society tribunals." Neither the notion of (distinct) peoples nor of (national) citizens do justice, in my opinion, to the sense of "a borderless community of like-minded persons that cannot be situated in space or in a map," as observed by Richard Falk in the case of the WTI. Richard Falk, *The Costs of War: International Law, the UN and the World Order After Iraq* (New York: Taylor & Francis, 2008), 176.

11. World Tribunal on Iraq, "Declaration of the Jury of Conscience of the World Tribunal on Iraq," 492.

12. As I discuss in Chapter 2, this remarkable diversity, consciously embraced and accommodated by WTI organizers, sparked continual debate among the organizers as to what held the different WTI hearings together as a global endeavor in the singular. The reader should note the absence of African, Asian, and Latin American cities from this list, which was discussed and lamented by WTI activists.

13. See Nancy Fraser, "Abnormal Justice," *Critical Inquiry* 34 (2008): 393–422.

14. Fraser, "Abnormal Justice," 400.

15. Surprisingly, "the why" of justice is a question Fraser does not raise.

16. See the interview with Richard Falk in the documentary, Dadak et al., producers, *For the Record*.

17. See Carl Schmitt, *The* Nomos *of the Earth in the International Law of the* Jus Publicum Europaeum (New York: Telos Press, 2006).

18. See Étienne Balibar, "Is a Philosophy of Human Civic Rights Possible? New Reflections on Equaliberty," *South Atlantic Quarterly* 103 (2004): 311–322.

19. See Jacques Derrida and Lieven De Cauter, "For a Justice to Come: An Interview with Jacques Derrida," in *The Derrida-Habermas Reader*, ed. Lasse Thomassen (Edinburgh: Edinburgh University Press, 2006). The interview with Derrida, conducted by the philosopher Lieven De Cauter—a founder of the WTI's opening session in Brussels—was conducted on February 19, 2004, and screened two months later at the inauguration of the three-day tribunal in Brussels on April 14, 2004.

20. The article appeared on May 31, 2003, in Germany's *Frankfurter Allgemeine Zeitung* and France's *La Libération*. For the English translation, see Jürgen Habermas and Jacques Derrida, "February 15, or What Binds Europeans Together: A Plea for a Common Foreign Policy, Beginning in the Core of Europe," *Constellations* 3 (2003): 291–297.

21. Habermas and Derrida, "February 15," 293–294.

22. See Herbert Docena, "Jakarta Peace Consensus Update: Where Is the Peace Movement?," *Foreign Policy in Focus*, September 11, 2003, http://www.fpif.org/articles/jakarta_peace_consensus_update_where_is_the_antiwar_movement.

23. A *New York Times* analysis asserted, two days after the global protests, that "the huge antiwar demonstrations around the world this weekend are reminders that there may still be two superpowers on the planet: the United States and world public opinion." Patrick Tyler, "News Analysis: A New Power in the Streets," *New York Times*, February 17, 2003.

24. Docena, "Jakarta Peace Consensus."

25. See the WTI's "Platform Text," archived in Appendix 1.

26. Nermin al-Mufti, "The Occupation as Prison," in Sökmen, *World Tribunal on Iraq*, 302–308.

27. Notably, the WTI's Istanbul session did not simply evaluate actions of the United States and its Coalition of the Willing. The role and responsibility of international law and institutions, including the United Nations; the governments of Turkey, the Middle East, and Europe; private corporations that profited from the war; and major corporate media were also judged. WTI-Istanbul's jury members were from "Iraq, the US and the UK," as the jury's declaration specified, as well as from India, Turkey, Malaysia, Belgium, South Korea, Mexico, Israel, and Argentina. For biographical information on the Panel of Advocates (also from numerous countries) and the Jury of Conscience, see Sökmen, *World Tribunal on Iraq*, 548–562.

28. Thomas Nagel, "The Problem of Global Justice," *Philosophy & Public Affairs* 2 (2005): 113–147.

29. See al-Mufti, "Occupation as Prison."

30. Richard Falk, "Israel's War Crimes," *Le Monde Diplomatique*, March 3, 2009. English edition.

31. Falk, *Costs of War*, 180. Emphasis added. Also contrast Falk's opening and closing statements, as the spokesperson for the Panel of Advocates at WTI-Istanbul, with those of Arundhati

Roy, spokesperson of the Jury of Conscience. All four are published in Sökmen, *World Tribunal on Iraq.*

32. Falk, "Israel's War Crimes."

33. A more precise formulation of this problematic would be: how, if at all, is it possible to distinguish the cosmopolitan ethos of concern and responsibility predicating the legitimacy of the *ex nihil* constitution of the WTI from the cosmopolitan ethos that conferred legitimacy, *ex ante* or *ex post facto,* to the equally *ex nihil* constitution of a "liberated" Iraq.

34. The critical jurist of international law, Costas Douzinas, argues that the concept of human rights was "hijacked by governments who understood the benefits of a moral-sounding policy." Costas Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (New York: Routledge-Cavendish, 2007), 33.

35. See the final version of Bartholomew's testimony at the WTI-Istanbul and Brussels sessions. Amy Bartholomew, "Empire's Law and the Contradictory Politics of Human Rights," in Bartholomew, *Empire's Law*, 161–189. I discuss this testimony in Chapter 4.

36. Fuyuki Kurasawa, "The Uses and Abuses of Humanitarian Intervention in the Wake of Empire," in Bartholomew, *Empire's Law*, 297–312, 298.

37. Perry Anderson and Tariq Ali would be among these commentators. In the *New Left Review*, Perry Anderson speaks of "the banner of human rights," which he identifies "first and foremost as the right of the international community to blockade, to bomb, to invade peoples or states that displease it." Tariq Ali is equally dismissive when he speaks of "the interests of the United States, defined, of course, as 'human rights.'" See Perry Anderson, "Internationalism: A Breviary," *New Left Review* 14 (2002): 5–25; and Tariq Ali, "Springtime for NATO," *New Left Review* I/234 (1999): 62–72, 62.

38. Jacques Derrida, "Autoimmunity: Real and Symbolic Suicides. A Dialogue with Jacques Derrida," in *Philosophy in a Time of Terror: Dialogues with Jürgen Habermas and Jacques Derrida*, ed. Giovanna Borradori (Chicago: University of Chicago Press, 2003), 85–136, 132.

39. Thomas Cushman, "Introduction: The Liberal-Humanitarian Case for War in Iraq," in *A Matter of Principle: Humanitarian Arguments for War in Iraq*, ed. Thomas Cushman (Berkeley: University of California Press, 2005), 5–6. Significantly, the book Cushman introduces—a collection of essays in support of the war from the perspective of liberal internationalism—is dedicated to "all those who have lost their lives in Iraq in the struggle against tyranny and for the human rights of the Iraqi people." Another example would be Michael Ignatieff's defense of Iraq's occupation in the name of human rights, discussed in Chapter 4.

40. Samera Esmeir, "The Violence of Non-Violence: Law and War in Iraq," *Journal of Law and Society* 1 (2007): 99–115, 103.

41. Andrew Arato, *Constitution Making Under Occupation: The Politics of Imposed Revolution in Iraq* (New York: Columbia University Press, 2009), vii.

42. Douzinas, *Human Rights and Empire*, 159.

43. Andrew Arato, "Empire's Democracy, Ours and Theirs," in Bartholomew, *Empire's Law*, 217–245, 219. Although I employ here Arato's qualification "ours," my motivation is not subscription but critique.

44. Simon Chesterman, "Occupation as Liberation: International Humanitarian Law and Regime Change," *Ethics & International Affairs* 3 (2004): 51–64.

45. Arato, "Empire's Democracy, Ours and Theirs," 218. Arato continues on the same page: "given the self-image of Americans, and a shared reading of their history across the political spectrum as a shining city on a hill, a beacon to all others, the power of this language [of

democracy and human rights] over both ordinary citizens and the intellectual strata in the US should never be underestimated." While this is true, there is no reason to limit the examination of such power over ordinary citizens and intellectual strata to the geography of the United States. The language of democracy and human rights, as well as its power, are global.

46. Arato, "Empire's Democracy, Ours and Theirs," 225.

47. Arato, "Empire's Democracy, Ours and Theirs," 219. Emphasis original.

48. Talal Asad, *On Suicide Bombing* (New York: Columbia University Press, 2007), 3.

49. Wendy Brown, "Human Rights and the Politics of Fatalism," *South Atlantic Quarterly* 103 (2004): 451–463, 460.

Chapter 1

1. I refer here to the global demonstrations on February 15, 2003. See Stefaan Walgrave and Dieter Rucht, eds., *The World Says No to War: Demonstrations Against the War on Iraq* (Minnesota: University of Minnesota Press, 2010).

2. Clearly, there is something violent in reducing complex individuals to their standing as "activists." Nonetheless I will employ this concept in shorthand.

3. See the documentary, Dadak et al., *For the Record*.

4. During the war, unembedded journalists were targeted by coalition forces, as documented by the World Tribunal on Iraq (WTI) session in New York City (May 2004). The media itself was charged with complicity in the WTI-Istanbul proceedings; "media-wrongs" as such were the subject of WTI sessions in Genoa and Rome in January and February 2005 respectively. See Dahr Jamail, "World Tribunal on Iraq: Media Held Guilty of Deception," *Inter-Press Service*, February 14, 2005.

5. Unless otherwise indicated, all quotations from participants cited in this chapter are from the transcripts of the WTI's founding meeting in Istanbul on file with the author.

6. The three antiwar coalitions in Turkey that supported the tribunal were: Peace Initiative Turkey, the Global Peace and Justice Coalition, and the No to War Coordination.

7. For the "PIT research fund" (as a teasing member of PIT called it), I remain grateful.

8. For a first-person account of the practical predication of the global antiwar movement on the alter-globalization movement—in particular through the World Social Forum and European Social Forum processes, resulting in the global calls for a demonstration on February 15, 2003, and for the constitution of an international tribunal on Iraq—see Paola Manduca, "Convergences and the Anti-war Movement: Experiences and Lessons," in *Globalizing Resistance: The State of Struggle*, ed. François Polet and CETRI (London: Pluto Press), 212–222. Paola Manduca was an active participant in the global WTI network. A scholarly account of the convergence and cross-fertilization between the two movements is offered by Mark Rupert, "In the Belly of the Beast: Resisting Globalization and War in a Neo-imperial Moment," in *Critical Theories, International Relations and the 'Anti-globalization Movement': The Politics of Global Resistance*, ed. Catherine Eschle and Bice Maiguashca (New York: Routledge, 2005), 36–53. An article highlighting the political difficulties of forging a convergence between the two movements is Ayça Çubukçu, " 'Ne Onların Savaşı, Ne Onların Barışı: Emperyalist Savaş ve Emperyal Barış Karşısında Muhalefet," *Birikim* 197 (2005): 57–60.

9. Other organizations, including the Amsterdam-based Transnational Institute, "a worldwide fellowship of committed activist-scholars" (http://www.tni.org), as well as unaffiliated individuals performed the function of "brokerage" (to speak the language of sociology) in the formation of the global WTI network. See Donatella Della Porta et al., *Globalization from Below:*

Transnational Activists and Protest Networks (Minneapolis: University of Minnesota Press, 2006), 62. Sidney Tarrow defines "brokerage" as "the linking of two or more previously unconnected social actors by a unit that mediates their relations with one another and/or with yet other sites." Tarrow, *The New Transnational Activism* (New York: Cambridge University Press, 2005), 190.

10. For an exposition of the World Social Forum (WSF) processes, and the Social Movements Assembly (SMA), see Ruth Reitan, *Global Activism* (London: Routledge, 2007), especially 141–147. Reitan interprets the SMA's emergence along with its self-authorized "calls to action" within the WSF processes—where no final document in the name of the whole Forum is permitted—as a reaction to the WSF's horizontal, "open space" structure. A more celebratory account of the SMA is provided in Boaventura De Sousa Santos, *The Rise of the Global Left: The World Social Forum and Beyond* (London: Zed Books, 2006). See also Boaventura De Sousa Santos, *The World Social Forum: Strategies of Resistance* (Chicago: Haymarket Books, 2005). For another sociological account, see Jacklyn Cock, "The World Social Forum and New Forms of Social Activism," in *Creating a Better World: Interpreting Global Civil Society*, ed. Rupert Taylor (Bloomfield, CT: Kumarian Press, 2004), 170–184.

11. Except in Istanbul, where mainstream media carried the WTI to its headlines, broadcasted live from the proceedings and the concluding press conference (or else contested the tribunal through its editor in chiefs and columnists), "alternative media" was the sole mechanism for publishing, broadcasting, and distributing the proceedings and conclusions of different WTI sessions. Among the global alternative-media outlets (self)mobilized during the WTI processes was the Independent Media Center (IMC) Network, whose creation and global expansion since the alter-globalization protests in Seattle, November 1999, has been deemed "one of the most significant alternative media developments at the end of the twentieth century." See Nick Couldry and James Curran, eds., *Contesting Media Power: Alternative Media in a Networked World* (New York: Rowman & Littlefield, 2003), 13. On the IMC, see Dorothy Kidd, "Become the Media: The Global IMC Network," in *Representing Resistance: Media, Civil Disobedience, and the Global Justice Movement*, ed. Andy Opel and Donnalyn Pompper (Westport, CT: Prager Publishers, 2003), 224–241. For the ideological underpinnings of the IMC network, see John D. H. Downing, "The Independent Media Center Movement and the Anarchist Socialist Tradition," in Couldry and Curran, *Contesting Media Power*, 243–259.

12. For an anthropological account of the alter-globalization movement, see Jeffrey Juris, *Networking Futures: Movements Against Corporate Globalization* (Durham, NC: Duke University Press, 2008). For an exceptional book, both in form and content, that remains the best manifestation of the spirit, inspirations, and aspirations of this generation of alter-globalization activists, see Notes From Nowhere, ed., *We Are Everywhere: The Irresistible Rise of Global Anticapitalism* (London: Verso, 2003). Memoirs and personal accounts of "journeys" with the movement(s) are also available. Among the most renowned are Jonathan Neale, *You Are G8, We Are 6 Billion: The Truth Behind the Genoa Protests* (London: Vision Paperbacks, 2002), and Paul Kingsnorth, *One No, Many Yeses: A Journey to the Heart of the Global Resistance Movement* (London: Free Press, 2003).

13. The narrative here is based on the WTI's Platform Text (2003). See Appendix 1.

14. It is precisely the element of *transnational consciousness*, admittedly not easy to "measure," whose virtual absence as a theoretical concern has disadvantaged the sociology of social movements. This absence partly accounts for the surprise by which many sociologists were taken after the "cycle of protests" that became visible in Seattle (November 1999). It also partially accounts for the difficulties this sociology has had in giving an account of the alter-globalization

movement. The difficulties faced relate not only to *what* this sociology measures to identify transnationality but also to *how* it makes this measurement. Even in reformulated approaches, a structuralism remains, as social movements are presented as reacting to structural changes in the locus of power. Among the first sociological attempts to "measure" transnationality is Doug Imig and Sidney Tarrow, "The Europeanization of Social Movements? A New Approach to Transnational Contention," in *Social Movements in a Globalizing World*, ed. Donatella Della Porta et al., 112–133. Also Donatella Della Porta and Sidney Tarrow, *Transnational Protest and Global Activism* (Oxford: Rowman & Littlefield, 2005).

15. To this "transnational consciousness," however, one must add the notable exceptions of the two antiwar coalitions in the United States. The World Can't Wait (which later conducted its own tribunal) and United for Peace and Justice (UFPJ) refused to support the WTI actively until the last moment. The frustration felt by the WTI's New York Steering Committee in its efforts to assure UFPJ's participation in the WTI processes confirms what a WTI participant from Bangkok observed regarding global efforts to secure UFPJ's participation in the WTI processes: "They [UFPJ representatives] said it explicitly that they don't see any political value added in [the WTI]; they do not think it will have a political impact in their domestic politics." This remark about "them" at the WTI founding meeting was most relevant, as "we" were in the process of constituting a *world* tribunal.

16. One version of this notion of "the production of the common" is elaborated in Michael Hardt and Antonio Negri, *Multitude: War and Democracy in the Age of Empire* (New York: Penguin, 2004), 196–202. Also see further Michael Hardt and Antonio Negri, *Commonwealth* (Cambridge, MA: Harvard University Press, 2009).

17. I employ the concept of "language" in sympathy with Paolo Virno, *A Grammar of the Multitude: For an Analysis of Contemporary Forms of Life* (Cambridge, MA: Semiotext(e), 2003).

18. Many anti-authoritarian and anarchist activists participating in the WTI processes took issue with the pursuit of justice through the form of a tribunal. While some were eventually persuaded on account of certain tendencies within the nascent WTI network that wished to subvert the form of a tribunal, others, such as a collective of self-identified anarchists in Istanbul, refused to get involved in the production of the WTI.

19. The recollection of the Russell Tribunal was pivotal in facilitating mobilization for the WTI in Turkey and beyond. Besides the Russell Tribunal, there were other "peoples' " and "citizens' " tribunals, which inspired some organizers of the WTI. The Permanent Peoples' Tribunal in Rome, founded by Lelio Basso—a former associate of the Russell Tribunal—would be among them. On the Permanent Peoples' Tribunal, see Klinghoffer and Klinghoffer, *International Citizens' Tribunals*, especially chapter 15.

20. Hannah Arendt, "What Is Freedom?," in *Between Past and Future: Eight Exercises in Political Thought* (1961; London: Penguin Books, 1993), 154.

21. Arendt, "What Is Freedom?," 154.

22. The lexicon of theatrical *production* was consistently used in the WTI processes, as organizers often talked about "roles," "audience," "scripts," "stages," "theatrical effects," "admissions," "rehearsals," "postproduction," and even "costumes." One organizer would exclaim after the New York session of the WTI in May 2004: "We put on a Broadway show!" In New York, two overtly theatrical ideas were entertained, but not put into practice. One of them was that the "script" of the session had to be such that it could be reproduced on stage in other cities of the United States. A second idea, taking theatricality more literally, was to imagine and produce the tribunal as a "play" in which, for example, testimonies from Iraq would be montaged together to construct a

narrative structure that could be performed in other cities. The idea was given up, however, upon fears that such a move might introduce too many attributes of "fiction" into the "reality" that the WTI felt was already denied and therefore wished to expose.

23. Arendt, "What Is Freedom?," 154–155.

24. In retrospect, it is clear that the word "content" occasioned remarkable losses in translation throughout the founding meeting—not only between native languages, but also across more specialized connotations. First, some used the term to refer to the "substance" of violations: such as particular killings of civilians, locatable by time and place. Others, mostly lawyers, used the term "content" to refer to specific laws and treaties that were violated during the war. Still others used the term to register a more politicized distinction between "form" and "content," where the latter would encompass the specific political analyses put forth by individual presentations and the overall performance of the tribunal.

25. Referring to this interview, Mitchell Dean writes that "perhaps Foucault's flirtation with the Maoists can be forgiven in retrospect," without explaining what exactly there is to be forgiven, or by whom. See Mitchell Dean, "Normalizing Democracy: Foucault and Habermas on Democracy, Liberalism and Law," in *Foucault Contra Habermas*, ed. Samantha Ashenden and David Owen (London: Sage Publications, 1999), 169.

26. Michel Foucault, "On Popular Justice: A Discussion with Maoists," in *Power/Knowledge: Selected Interviews and Other Writings 1972–1977*, ed. Colin Gordon (New York: Pantheon Books, 1980), 8.

27. Foucault, "On Popular Justice," 1.

28. Foucault, "On Popular Justice," 8–9. Emphasis added.

29. Thomas Osborne, "Critical Spirituality: On Ethics and Politics in the Later Foucault," in Ashenden and Owen, *Foucault Contra Habermas*, 54; see also Ben Golder, *Foucault and the Politics of Rights* (Stanford, CA: Stanford University Press, 2015).

30. Michel Foucault, "Confronting Governments: Human Rights," in *The Essential Works of Michel Foucault, 1954–1984*, vol. 3, *Power*, ed., James D. Faubion (New York: New Press, 2000), 474.

31. The ambiguity here concerns the very existence of "international citizenship": is it a function of "power," or independent of it? When Foucault posits a universal obligation to denounce every abuse of power regardless of its perpetrator or victim, he appears to suggest either that "power" as such is globally opposed to an international citizenry that remains independent of it, or that international citizenship itself is a distribution of power.

32. It is striking that Ben Golder, although he cites Foucault's text virtually in full, does not engage with Foucault's "community of the governed" when he focuses on "the status of the human in Foucault's late invocation of human rights." Golder, *Foucault and the Politics of Rights*, 86.

33. Foucault, "Confronting Governments: Human Rights," 474. Emphasis added.

34. There was scant hope of bringing the case of the United States to the International Criminal Court, as it had not ratified the court's statute, and the UN Security Council was unlikely to make a "special appeal" to the ICC prosecutor.

35. These scholars, David Held among them, argue for the establishment of a cosmopolitan law that would seek the creation of a transnational legislative and executive at the global level. I return to Held in the fourth chapter. See David Held, *Cosmopolitanism: Ideals and Realities* (Cambridge: Polity Press, 2010); David Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Stanford, CA: Stanford University Press, 1995), 272. See also

Daniele Archibugi and David Held, eds., *Cosmopolitan Democracy: An Agenda for a New World Order* (Cambridge: Polity Press, 1995); David Held, Anthony G. McGrew, David Goldblatt, and Jonathan Perraton, *Global Transformations: Politics, Economics and Culture* (Stanford, CA: Stanford University Press, 1999); and David Held and Anthony McGrew, eds., *The Global Transformations Reader* (Cambridge: Polity Press, 2000).

36. "Proposal from ICTI to the Independent International Tribunal on Iraq," dated and signed, August 1, 2003, presented at the WTI founding meeting, October 26–29, 2003, Istanbul. On file with the author.

37. Foucault, "On Popular Justice," 1. Emphasis added.

38. Glen Rangwala, *The Promise of Justice: First Steps Towards an International Criminal Court*, with an introduction by Lord Archer of Sandwell (London: Institute for Law and Peace, 2003). Participants from London distributed this booklet at the WTI's founding meeting. On file with the author.

39. This very tension attending the "neutrality" attached to the concept of civil society on the one hand, and the concept's normative usage (often to imply "progressive" forces) on the other, inhibits efforts to define and theorize it. The concept of "*global* civil society" only exacerbates this tension. Beyond the normative attributes of the concept of civil society, moreover, there is the fact of its "empirical" diversity. In response to this diversity (and in line with their own political preferences), some commentators propose to exclude racists or "profit seeking private entities" from their definitions of global civil society. See Ann Florini and P. J. Simpsons, "What the World Needs Now?," in *The Third Force: The Rise of Transnational Civil Society*, ed. Ann M. Florini (Washington, DC: Carnegie Endowment for International Peace, 2002), 7. Still others would exclude from "civil society" those who do not manifest a "proclivity towards non-violence," as in John Keane, *Global Civil Society?* (Cambridge: Cambridge University Press, 2003), 14.

Ruth Reitan, in *Global Activism*, explains her preference for speaking of "global activists" rather than a transnational "civil society" in her discussion of a decidedly left-wing alter-globalization movement. She argues that the former term, "global activists," is more specific than "civil society." Unfortunately, this formulation does not resolve the problem of political diversity: just as there are "right-wing" members of global civil society, so there are "right-wing" global activists. This problem of definition (which is more than a problem of definition) is not an easy one to resolve, and it attends any attempt to name a non-state collective subject at the global level, be it "progressive" or "conservative," in positive terms (the name of "multitude" is no exception).

But the moment one limits the problem to defining a *non-state* subject, one becomes haunted by Antonio Gramsci and his reflections on civil society: "by 'State' should be understood not only the apparatus of government, but also the 'private' apparatus of 'hegemony' or civil society" as he speaks of "civil society—which is 'State' too, indeed is the State itself." Antonio Gramsci, *Selections from the Prison Notebooks*, ed. Quintin Hoare and G. Nowell Smith (New York: International Publishers, 1999), 261.

40. Arundhati Roy, "Opening Speech of the Spokesperson of the Jury of Conscience," in Sökmen, *World Tribunal on Iraq*, 2.

41. Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 1983). If the development of print capitalism was a material condition for the emergence of the nation as an imagined community, as many scholars have argued, then the properly named "World Wide Web" has similarly facilitated the development of "the world" as an imagined community.

42. Foucault, "Confronting Governments: Human Rights," 474.

43. By situating the WTI in the tradition of the Nuremberg Tribunal, and the "Nuremberg obligation," Richard Falk implicitly observes this complementarity. Falk also argues that the proper context of the WTI is the "moral globalization" of the 1990s, which has rallied support for humanitarian interventions worldwide. See Falk, *Costs of War* and Richard Falk, "Opening Speech on Behalf of the Panel of Advocates," in Sökmen, *World Tribunal on Iraq*, 5–11.

44. Hardt and Negri, *Multitude*, 291.

45. The B*Russell*s Tribunal—spelled intentionally this way to allude to the Russell Tribunal of 1967—was the WTI's inaugurating session, which took place in Brussels in April 2004.

46. Yet another ambiguity attends the Brussels announcement, "President Bush: The World Holds You Accountable": who is the *author* of this announcement? Is it "the world" or a subject other than "the world?"

47. Judith Butler, *Giving an Account of Oneself* (New York: Fordham University Press, 2005), 53.

48. Eventually, the B*Russell*s Tribunal addressed the neoconservative Project for the New American Century. Before its disappearance, the website of the Project for the New American Century provided a simple self-definition: "established in the spring of 1997, the Project for the New American Century is a non-profit, educational organization whose goal is to promote American global leadership." On file with the author.

49. Emphasis added.

50. Emphasis added.

51. This formulation is susceptible to the charge that it "falls prey" to what Hans Lindahl calls "the metaphysics of presence that governs Western constitutional orthodoxy: a collective subject is either represented by constituted powers or directly present to itself as a constituent power," although Lindahl's own "ontology of collective selfhood" is far from a revolt against this government. Hans Lindahl, "Towards an Ontology of Collective Selfhood," in *The Paradox of Constitutionalism: Constituent Power and Constitutional Form*, ed. Martin Loughlin and Neil Walker (Oxford: Oxford University Press, 2007), 19.

52. Emphasis added.

53. Although the moderator did not seem to think so, all Iraqis opposed to the war and the occupation of their country were parts of the global antiwar movement. Biju Mathew, in his testimony at the WTI's culminating session in Istanbul, argued not only this, but also that "a specific part of the *leadership* of the antiwar movement belongs to them," that is, to the Iraqis resisting the occupation. Biju Mathew, "Alternatives for an Alternative Future," in Sökmen, *World Tribunal on Iraq*, 465–468, 466. Emphasis added.

54. See Appendix 2.

55. See the WTI Platform Text, Appendix 1.

56. Jacques Rancière, *Dis-Agreement: Politics and Philosophy* (Minneapolis: Minnesota University Press, 1999), 61.

57. In the WTI's final session in Istanbul, five women (including myself) who comprised its "Contents Committee" collectively testified as to the origins, aspirations, and intentions of the WTI. The goal was to ask the audience and the Jury of Conscience to judge the WTI itself. In this testimony, the "legitimacy of the tribunal" was presented as a montage of extracts from the founding meeting transcripts—as a polyphonic demonstration. A conscious effort was made to *manifest* the diversity of approaches to the question of the tribunal's legitimacy. This has been my purpose in this chapter. To make sense of the multiple and conflict tendencies informing the

WTI's constitution, however, I made heuristic use of two categories, "the legal" and "the political." For another scholarly account of the WTI that mobilizes these categories—albeit with a different substance—see the article by the jurist Jayan Nayar, who evaluates the WTI from the perspective of his "people's law" approach. Nayar, "Taking Empire Seriously," 313–340. Nayar was an active participant in the WTI, who acted as an organizer of its Rome session on "media wrongs" in 2005.

I must also note that while the goal of the Contents Committee's collective testimony in Istanbul was to construct a polyphonic demonstration of the multitude who produced the WTI—its diverse political orientations, horizontal and leaderless organizational structure, etc.—this testimony had an unanticipated, *adverse* effect. Many articles on the WTI's Istanbul session highlighted "the five women" as chief organizers of the WTI, despite our explicit declaration that we were neither leaders nor main organizers, nor representatives of the WTI in any capacity. I revisit this problem, if indirectly, in the Intermezzo, "Can the Network Speak?"

For a brief reflection on Mikhail Bakhtin's "polyphonic conception of narrative" as a useful means to conceptualize "the multitude in movement as a kind of narration that produces new subjectivities and languages," see Hardt and Negri, *Multitude*, 210–211.

58. Louis Althusser, *For Marx* (London: New Left Books, 1977).

59. Given the foundational opacity she posits between "the subject" and her own self, Judith Butler formulates a similar question in her search for the individual "ethical subject." See Butler, *Giving an Account of Oneself*.

60. In the WTI processes, as in its constitutional encounter, the response to the question "who are we?" was often given in terms of "what we *do*." I address this point further in the Intermezzo, "Can the Network Speak?"

61. For the WTI Platform Text, see Appendix 1.

62. Jacques Rancière, *On the Shore of Politics* (London: Verso, 2007), 49. Emphasis added.

63. I am grateful to Gil Anidjar for this formulation.

64. I discuss this formulation further in Chapter 4.

65. "In February 2003, weeks before an illegal war was initiated against Iraq, millions of people protested in the streets of the world. That call went unheeded. No international institution had the courage or the conscience to stand up to the threat of aggression of the US and UK governments. [Now] Iraq has been invaded, occupied, and devastated. The attack on Iraq is an attack on justice, on liberty, on our safety, on our future, on us all. We, people of conscience, decided to stand up. We formed the World Tribunal on Iraq (WTI) to demand justice and a peaceful future. . . . The principal object of the WTI is to tell and disseminate the truth about the Iraq War." See Appendix 2. Also see World Tribunal on Iraq, "Declaration of the Jury of Conscience," in Sökmen, *World Tribunal on Iraq*, 492.

Chapter 2

1. I further address the problem of establishing a "collective individual" in the Intermezzo, "Can the Network Speak?"

2. As in Chapter 1, the analysis I offer in this section is based on my participation at the founding meeting of the WTI in October 2003 and on a retrospective study of its meeting transcripts.

3. Unless otherwise noted, all quotations are from the transcripts of the WTI's founding meeting. On file with the author.

4. Foucault, "Confronting Governments: Human Rights."

5. For the significant number of self-identified anarchists involved in the global and local WTI processes, perhaps the most challenging aspect of the effort was this: to claim, in practice, some form of "authority" for the tribunal in an "anti-authoritarian" manner.

6. Graeme Chasters and Ian Welsh, writing on the alter-globalization movement, argue that "the slogan 'unity in diversity' resonates with the concept of the multitude defined by [Antonio] Negri," as elements of this movement "declare global collective stakes within a philosophy based on the recognition of difference as generative and creative, and expressed simply through the slogan 'unity in diversity,' where diversity is the becoming of a plane of immanence, catalysed by difference." What "unity" means in this formulation, however, remains unclear. Graeme Chasters and Ian Welsh, *Complexity and Social Movements: Multitudes at the Edge of Chaos* (London: Routledge, 2006).

7. Italics added to reflect spoken emphasis.

8. For sociology as well, what constitutes a *global* movement is a contested question in response to which various criteria that need to be satisfied by activists are tirelessly proposed. For an example of such a set of criteria, see Della Porta et. al., *Globalization from Below*, 18–21.

9. This is not to endorse the false assumption that all inhabitants of New York City can (or choose to) speak or write in English—though all organizers of the WTI's New York session could. Nevertheless, English was not the native language of all WTI activists in New York. During the first WTI organizing meeting she attended in New York City, an American lawyer who was shocked by the number of people speaking with "foreign" accents, felt the need to ask upon her arrival at the meeting: "Do you all speak English"?

10. I address this question further in the Intermezzo, under the section "Can the Network Speak?"

11. Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1998), 233.

12. Peacerights, *Report of the Inquiry into the Alleged Commission of War Crimes by Coalition Forces in the Iraq War During 2003* (London: Peacerights, 2003), 4. This document can be found on the Internet at http://www.inlap.freeuk.com/peacerights-inquiry.pdf.

13. The Socialist Workers Party (SWP) forms the backbone of the Stop the War Coalition in the United Kingdom. It declares itself to be anti-capitalist and anti-imperialist. See https://www.swp.org.uk/about-us.

14. Coalition for the International Criminal Court is the most well-known NGO network seeking to have the ratification of all states, including the United States, for the ICC. See http://www.iccnow.org/?mod=about.

15. Hardt and Negri, *Multitude*, 29.

16. As I discuss further in Chapter 4, Hardt and Negri also make the surprising proposal—given their earlier assertion that the imperial tribunes "function to neutralize and pacify conflict rather than provide justice"—that the project of the ICC "should be extended." See Hardt and Negri, *Multitude*, 276, 297.

17. Carl Schmitt, *The Concept of the Political* (Chicago: University of Chicago Press, 1996), 56.

18. Schmitt, *Concept of the Political*, 79.

19. Zeynep Toufe, "Protectors of 'the Innocent and of Memory,'" June 26, 2005, blog entry from the World Tribunal on Iraq culminating session in Istanbul, http://mtdiablopeaceandjustice.blogspot.co.uk/2005/06/report-from-world-tribunal-on-iraq.html.

20. Roy, "Opening Speech," 2.

21. See the documentary, Dadak et. al., *For the Record*.

22. Müge G. Sökmen, "Preface," in *World Tribunal on Iraq*, ix. On the WTI and the desire to

constitute a counter-memory, see also WTI Istanbul Coordination, "The WTI as an Alternative: An Experimental Assertion," in Sökmen, *World Tribunal on Iraq*, 468–483, 480.

23. Amnesty International, "Turkey: Conscientious Objector Mehmet Tarhan Is a Prisoner of Conscience and Must Be Released Now!," AI Index: EUR 44/036/2005, News Service No: 338, December 9, 2005, https://www.amnesty.org/download/Documents/84000/eur440362005en.pdf. Also see https://www.amnesty.org/download/Documents/76000/eur440192006en.pdf.

24. All quotations from Falk in the following paragraph are archived in Falk, "Opening Speech," 5–11.

25. Roy, "Opening Speech," 2–5.

26. Richard Falk, "The World Speaks on Iraq," *Nation*, July 14, 2005, https://www.thenation.com/article/world-speaks-iraq/.

27. World Tribunal on Iraq, "Bush and Blair Called to Justice at Different Embassies Around the World: Law Summons Endorsed by Former UN Officials, Renowned Academicians, Writers and Former EU Parliament Member," press release, May 17, 2005, Istanbul, Brussels, Tokyo, Lisbon, https://nyc.indymedia.org/en/2005/05/51405.shtml.

28. I was among those at the US consulate in Istanbul on May 17, 2005.

29. Zana Yavuz, "Bush ve Blair'e Mahkeme Celbi," *Aksam*, May 18, 2005, 1.

30. World Tribunal on Iraq, "World Tribunal on Iraq Istanbul Final Session Booklet," June 24–26, 2005, Topkapi Palace, Istanbul, 2. On file with the author.

31. Anthony Alessandrini, "The Violation of the Will of the Global Anti-war Movement as a Crime Against Peace," in Sökmen, *World Tribunal on Iraq*, 91–92.

32. Khaled Fahmy's reflections on the WTI were published by *Al-Ahram Weekly*. See Khaled Fahmy, "Searching for Justice," *Al-Ahram Weekly*, July 21–27, 2005, http://weekly.ahram.org.eg/Archive/2005/752/op3.htm.

33. Amal Sawadi, "Detentions and Prison Conditions," in Sökmen, *World Tribunal on Iraq*, 237.

34. Fadhil al-Bedrani, "Collective Punishment," in Sökmen, *World Tribunal on Iraq*, 239.

35. See Nermin al-Mufti, "Occupation as Prison."

36. Fragment of the WTI Contents Committee collective presentation by Ayşe Berktay. See WTI Istanbul Coordination, "WTI as an Alternative," 468.

37. Fragment of the WTI Contents Committee collective presentation by Ayşe Berktay. See WTI Istanbul Coordination, "WTI as an Alternative," 469.

38. Richard Falk, "Closing Speech on Behalf of the Panel of Advocates," in Sökmen, *World Tribunal on Iraq*, 489.

39. World Tribunal on Iraq, "Declaration of the Jury of Conscience," 493. Also see Appendix 2.

40. Arundhati Roy, "Closing Speech on Behalf of the Jury of Conscience," in Sökmen, *World Tribunal on Iraq*, 490.

41. Human Rights Watch, *The Poisoned Chalice: A Human Rights Watch Briefing Paper on the Decision of the Iraqi High Tribunal in the Dujail Case* (June 2007), 1, https://www.hrw.org/legacy/backgrounder/ij/iraq0607/.

42. The original name of the tribunal, signed into law by Paul Bremer III as a decree of the Coalition Provisional Authority, was tellingly the "Iraqi Special Tribunal for Crimes Against Humanity."

43. Eric Stover, Hanny Megally, and Hania Mufti, "Bremer's 'Gordian Knot': Transitional Justice and the US Occupation of Iraq," *Human Rights Quarterly* 27 (2005): 838.

44. Amnesty International, "Iraq: Ensuring Justice for Human Rights Abuses," AI Index:

MDE/14/080/2003, April 2003, https://www.amnesty.org/download/Documents/108000/mde140802003en.pdf.

45. For example, Human Rights Watch/Middle East, *Iraq's Crime of Genocide: The Anfal Campaign Against the Kurds* (New Haven, CT: Yale University Press, 1994).

46. Peter Landesman, "Who v. Saddam?," *New York Times*, July 11, 2004.

47. Human Rights Watch, *Judging Dujail: The First Trial Before the Iraqi High Tribunal* (November 2006), 3, http://www.hrw.org/reports/2006/iraq1106/.

48. Human Rights Watch, *Judging Dujail*, 3.

49. Human Rights Watch, *Judging Dujail*, 4.

50. Human Rights Watch, *Judging Dujail*, 8. After the first sentence, HRW cites Coalition Provisional Authority Order Number 48: Delegation of Authority Regarding an Iraqi Tribunal, CPA/ORD/9 Dec 2003/48 (2003) (IST Statute).

51. M. Cherif Bassiouni, "Post-Conflict Justice in Iraq: An Appraisal of the Iraq Special Tribunal," *Cornell International Law Journal* 38 (2005): 345.

52. Bassiouni, "Post-Conflict Justice in Iraq," 340.

53. Bassiouni, "Post-Conflict Justice in Iraq," 340. The author of this article, a renowned international lawyer, was a member of this working group, and a drafter of the "post-conflict justice plan" in question.

54. Bassiouni, "Post-Conflict Justice in Iraq," 342

55. For example, see the views of officials expressed in Peter Landesman, "Who v. Saddam." Also see Human Rights Watch, *Judging Dujail*, 4.

56. Bassiouni, "Post-Conflict Justice in Iraq," 343. The author of the article claims to have been at this meeting in the White House.

57. Michael Newton, "The Iraqi Special Tribunal: A Human Rights Perspective," *Cornell International Law Journal* 38 (2005): 890.

58. Human Rights Watch, *Judging Dujail*, 6n15.

59. US Department of State, *Quarterly Update to Congress: Section 2207 Report on Iraq Relief and Reconstruction* (January 2004).

60. Human Rights Watch, *Judging Dujail*, 9.

61. Human Rights Watch, *Judging Dujail*, 6.

62. Human Rights Watch, *Judging Dujail*, 88.

63. Human Rights Watch, *Judging Dujail*, 84.

64. Nehal Bhuta, "Between Liberal Legal Didactics and Political Manichaeism: The Politics and Law of the Iraqi Special Tribunal," *Melbourne Journal of International Law* 6 (2005): 264.

65. Landesman, "Who v. Saddam Hussein."

66. Landesman, "Who v. Saddam Hussein."

67. Bhuta, "Between Liberal Legal Didactics and Political Manichaeism," 263, 270.

68. Human Rights Watch, *Poisoned Chalice*, 34.

69. Human Rights Watch, *Poisoned Chalice*, 34.

70. Danilo Zolo, *Victors' Justice: From Nuremberg to Baghdad* (London: Verso, 2009).

71. The Human Rights Watch report, *Judging Dujail*, is filled with footnotes discussing the case law of various international tribunals to measure the statute and reasoning of the IHT against "latest developments" in the adjudication of crimes against humanity.

72. As for the British, "in early 2004, as a split emerged between the British and the Americans on the question of the death penalty, the British made it clear that they would not be able

to play any direct role in supporting the tribunal process." See Stover, Megally, and Mufti, "Bremer's 'Gordian Knot,'" 852.

73. In contrast, a senior advisor to the ambassador-at-large for war crimes issues under the US Department of State celebrated the IHT, as it "represents a return to the first principles of international criminal law because it is grounded in the fertile soil of state sovereignty." Cited in Newton, "Iraqi Special Tribunal," 896.

74. Amnesty International, "Iraq: Amnesty International to Observe the Trial of Saddam Hussein," AI Index: MDE 14/037/2005, News Service No: 280, October 18, 2005, https://www.amnesty.org/download/Documents/88000/mde140372005en.pdf.

75. Amnesty International, "Iraq: Iraqi Special Tribunal—Fair Trials Not Guaranteed," AI Index: MDE 14/007/2005, May 12, 2005, https://www.amnesty.org/en/documents/MDE14/007/2005/en/.

76. Ruti Teitel, "Review of *Post-Conflict Justice* by M. Cherif Bassiouni," *American Journal of International Law* 98 (2004): 874.

77. Bhuta, "Between Liberal Legal Didactics and Political Manichaeism," 267.

78. Amnesty International, "Iraq: Iraqi Special Tribunal—Fair Trials Not Guaranteed," 1. Emphasis added.

79. Ayça Çubukçu, "On the Exception of Hannah Arendt," in *Law, Culture and the Humanities* (2015), published online before print, doi: 10.1177/1743872115588442.

80. Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2004), 303.

81. Roy, "Opening Statement," 3–4.

82. World Tribunal on Iraq, "Declaration of the Jury of Conscience," 501. Also see Appendix 2.

83. Simon Chesterman asks a similar question in the case of the occupation of Iraq: "Can the justice of a postconflict settlement be anything other than victor's justice?" See Chesterman, "Occupation as Liberation," 52. In the international context, the victor's justice critique protests that only one side—those vanquished after a military confrontation—is subject to trial for crimes against humanity and war crimes since the Nuremberg and Tokyo tribunals, without exception. One advocate of cosmopolitan law and order responds thus to the "victor's justice" critique in a footnote: "Of course, international tribunals are a function of power, even of military victory, but this does not invalidate them if their aim is to ensure that military victory is tempered with a visible sense of justice." The "of course" aside, the end is said to account for the means, even when the end is posited not as justice, but as a "visible sense of justice." See Robert Fine, "Cosmopolitanism and Violence: Difficulties of Judgment," *British Journal of Sociology* 57 (2006): 49–67, 65n.

84. Walter Benjamin, "Critique of Violence," in *Reflections: Essays, Aphorisms, Autobiographical Writing*, ed. Peter Demetz (New York: Schocken Books, 1978), 295.

Chapter 3

1. Amnesty International, "Media Advisory," AI Index: MDE 14/026/2005, News Service No: 219, August 10, 2005, https://www.amnesty.org/en/documents/mde14/026/2005/en/.

2. Amnesty International, "Iraq: The New Constitution Must Protect Human Rights," AI Index: MDE 14/023/2005, August 10, 2005, https://www.amnesty.org/en/documents/mde14/023/2005/en/.

3. Amnesty International, "Iraq: Call for a Human Rights Based Constitution," AI Index:

MDE 14/025/2005, August 11, 2005, https://www.amnesty.org/download/Documents/88000/mde140252005en.pdf.

4. Amnesty International, "Iraq: Call for a Human Rights Based Constitution."

5. The quotations cited in this section are on file with the author and are archived through the WTI's global listserv, August–September 2005.

6. Balibar, "Is a Philosophy of Human Civic Rights Possible?," 313 and 317. Balibar himself does not use the term "constituted rights," which I prefer as shorthand to designate rights constituted through popular sovereignty—or an autonomous constituent power—in contradistinction to fundamental, "natural" rights. Jürgen Habermas is one philosopher acknowledged by Balibar to have recognized the "unacknowledged competition" between fundamental and constituted rights. See Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge, MA: MIT Press, 1996).

7. That is *only* "if we presume that the 'rights of the citizen' themselves form the heart and goal of the constitutional order . . . then what we are concerned with is something like a constitution of the constitution." Balibar, "Is a Philosophy of Human Civic Rights Possible?," 311.

8. The name of the B*Russell*s Tribunal is intentionally spelled this way to allude to the Russell Tribunal of 1967.

9. World Tribunal on Iraq, "Declaration of the Jury of Conscience." See Appendix 2 for the complete document. Also reprinted in Arnove, *Iraq: The Logic of Withdrawal*; Falk, Gendzier, and Lifton, *Crimes of War*; Sökmen, *World Tribunal on Iraq*.

10. On file with the author. Ellipses in the original.

11. Hans von Sponeck was a key participant in numerous WTI sessions, including the B*Russell*s Tribunal in April 2004 and the WTI's Istanbul session in June 2005.

12. See Nehal Bhuta, "Antinomies of Transformative Occupation," *European Journal of International Law* 16 (2005): 721–740.

13. Schmitt, Nomos *of the Earth*, 78.

14. See Andrew Arato, "The Occupation of Iraq and the Difficult Transition from Dictatorship," in *From Liberal Values to Democratic Transition*, ed. Ronald Dworkin et al. (New York: Central European University Press, 2004), 167–191. Arato's chapter was circulated earlier, in 2003, as an article in *Constellations*.

15. Gayatri Spivak, "Righting Wrongs," *South Atlantic Quarterly* 103 (2004), 523–581.

16. Schmitt, Nomos *of the Earth*, 73.

17. Schmitt, Nomos *of the Earth*, 71.

18. Schmitt, Nomos *of the Earth*, 73.

19. Carl Schmitt, *Legality and Legitimacy* (Durham, NC: Duke University Press, 2004).

20. Giorgio Agamben argues that in the paradigm of the camp—that is, not only the space of the camp, but also the space of modernity and its sovereignty—what diminishes in a zone of indistinction is the very decidability between fact and law, where fact passes into law and law passes ever into fact. See Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford, CA: Stanford University Press, 1998), 171.

21. To emphasize, this predicament of the law of fact and the fact of law reveals more than a temporal index of ordering, involving as well the absence of recognition of a sphere of legitimacy outside the law, in whose presence Schmitt was invested. I thank Gil Anidjar for this insight.

22. Schmitt, *Legality and Legitimacy.* Also see, especially, part 1, chapter 4 of Schmitt, Nomos *of the Earth.*

23. Susan Buck-Morss, "Sovereign Right and the Global Left," *Rethinking Marxism* 19 (2007): 432–451.

24. Buck-Morss, "Sovereign Right and the Global Left," 432–451.

25. Especially in Benjamin, "Critique of Violence."

26. Benjamin, "Critique of Violence."

27. I discuss the collective composition of the WTI's Platform Text in Chapter 1.

28. Emphasis added.

29. Margaret Canovan, introduction to *Human Condition*, by Arendt, viii.

30. Arendt, *Human Condition*, 5.

31. Michael Hardt and Antonio Negri, *Empire* (Cambridge, MA: Harvard University Press, 2000), 313–314.

32. Hardt and Negri, *Empire*, 311.

33. Hardt and Negri, *Empire*, 24.

34. Brown, "Human Rights and the Politics of Fatalism," 460.

35. Hardt and Negri, *Empire*, 36.

36. Hardt and Negri, *Empire*, 36. I address cosmopolitan justifications of the North Atlantic Treaty Organization's military intervention in Kosovo—as precedent for the occupation of Iraq—in Chapter 4.

37. My concern here is not with the accuracy of the report, but with how it was used to support the original argument of the organizer from the B*Russell*s Tribunal.

38. Hardt and Negri, *Multitude*, 30.

39. Hardt and Negri, *Empire*, 36.

40. Hardt and Negri, *Empire*, 36.

41. Yanar Mohammed, interviewed by Amy Goodman, "Draft Constitution May Strip Iraqi Women of Basic Human Rights," August 23, 2005. Rush transcript available at Democracy Now, http://www.democracynow.org/2005/8/23/draft_constitution_may_strip_iraqi_women.

42. Brown, "Human Rights and the Politics of Fatalism," 454.

43. Brown, "Human Rights and the Politics of Fatalism," 453.

44. Brown, "Human Rights and the Politics of Fatalism," 462.

45. Brown, "Human Rights and the Politics of Fatalism," 453.

46. See Brown, "Human Rights and the Politics of Fatalism."

47. Balibar, "Is a Philosophy of Human Civic Rights Possible?," 311.

48. Balibar, "Is a Philosophy of Human Civic Rights Possible?," 312.

49. Balibar, "Is a Philosophy of Human Civic Rights Possible?," 312.

50. Amnesty International, "Iraq: The New Constitution Must Protect Human Rights."

51. That is, they did so notwithstanding the exception of British and American forces and countless other non-Iraqis "engaged" with the constitution in and out of Iraq, in the headquarters of AI or Human Rights Watch in the Empire State Building in New York City.

52. Balibar, "Is a Philosophy of Human Civic Rights Possible?," 312. Emphasis in the original.

53. Balibar, "Is a Philosophy of Human Civic Rights Possible?," 312.

54. Balibar, "Is a Philosophy of Human Civic Rights Possible?," 312. Emphasis in the original.

55. Balibar, "Is a Philosophy of Human Civic Rights Possible?," 315.

56. Amnesty International, "Iraq: The New Constitution Must Protect Human Rights," section 2, "Relation Between National Law and International Law."

57. Amnesty International, "Iraq: The New Constitution Must Protect Human Rights," section 11, "Women's Human Rights."

58. Talal Asad, "What Do Human Rights Do? An Anthropological Inquiry," *Theory & Event* 4 (2000): paragraph 55.

59. Balibar, "Is a Philosophy of Human Civic Rights Possible?," 313.

60. Balibar, "Is a Philosophy of Human Civic Rights Possible?." 315. Balibar is referring to Habermas, *Between Facts and Norms*.

61. Balibar, "Is a Philosophy of Human Civic Rights Possible?," 318.

62. Balibar, "Is a Philosophy of Human Civic Rights Possible?," 319.

63. Arendt, "What Is Freedom?," 163.

64. Arendt, "What Is Freedom?," 296n21.

65. Arguably, some members of the George W. Bush administration could trace their intellectual lineage to Carl Schmitt via his student, and their mentor, Leo Strauss. See Shadia B. Drury, *Leo Strauss and the American Right* (New York: St. Martin's Press, 1999), which names among others, Paul Wolfowitz, Clarence Thomas, and John Ashcroft as protégés of Strauss.

66. Balibar, "Is a Philosophy of Human Civic Rights Possible?," 317.

67. Balibar, "Is a Philosophy of Human Civic Rights Possible?," 318.

68. As I noted earlier, "constituted rights" is not a term that Balibar himself employs, but one I attempt to develop in this chapter.

69. Balibar, "Is a Philosophy of Human Civic Rights Possible?," 315.

70. Balibar, "Is a Philosophy of Human Civic Rights Possible?," 316.

71. Perhaps the best known—to the global antiwar movement and the WTI network—Iraqi blogger, writing from within Iraq, was "Riverbend," who authored the "Girl Blog from Baghdad" at http://www.riverbendblog.blogspot.com. In a particular blog, which was circulated during the AI controversy within the WTI network listserv, she wrote, "I've been reading and re-reading the Iraqi draft constitution since the beginning of September. I decided to ignore the nagging voice in my head that kept repeating, '*A new constitution cannot be legitimate under an occupation*!' and also the one that was saying, '*It isn't legitimate because the government writing it up isn't legitimate*.' I put those thoughts away and decided to try to view the whole situation as dispassionately as possible" (original emphasis). On the subject of the constitution's translation, in humor she observed the same day, September 17, 2005, "It was during the online search for the *real* draft constitution that the first problem with the document hit me. There are, as far as I can tell, three different versions. There are two different Arabic versions and the draft constitution translated to English in the *New York Times* a few weeks ago differs from them both. I wish I could understand the Kurdish version—I wonder if that is different too. The differences aren't huge—some missing clauses or articles. Then again, this is a constitution—not a blog . . . one would think precision is a must." Archived at http://riverbendblog.blogspot.com/2005_09_01_riverbendblog_archive.html.

72. Habermas, *Between Facts and Norms*, 103.

73. Among "the people of Iraq," one voice, "Riverbend," objected thus to the constitution initiated by the Coalition of the Willing in her blog entry circulated during the WTI network controversy: "Federalism based on geography is acceptable, but federalism based on ethnicity and sect? Why not simply declare civil war and get it over with?"

Archived at http://riverbendblog.blogspot.com/2005_09_01_riverbendblog_archive.html.

74. Balibar, "Is a Philosophy of Human Civic Rights Possible?," 316.

75. Ernst-Wolfgang Böckenförde is a scholar of Carl Schmitt. The particular work Balibar considers in his reflections here is Ernst-Wolfgang Böckenförde, *Le Droit, l'État et la constitution démocratique: Essais de théorie juridique, politique et constitutionnelle*, trans. Olivier Jouanjan (Paris: Bruylant L.G.D.J., 2000).

76. Balibar, "Is a Philosophy of Human Civic Rights Possible?," 317.

77. Balibar, "Is a Philosophy of Human Civic Rights Possible?," 318.

78. Althusser, *For Marx*.

79. Balibar, "Is a Philosophy of Human Civic Rights Possible?," 318. Emphasis in the original.

80. Virno, *Grammar of the Multitude*, 21.

81. Virno, *Grammar of the Multitude*, 22. Emphasis in the original.

82. Virno, *Grammar of the Multitude*, 23.

83. A particular WTI network debate, which concerned the decision to employ one of the alternative terms, is most relevant in this context: "the people of Iraq" vs. "the peoples of Iraq" in the common language of the WTI. This global network debate was conducted with the full weight of the decision, with the acknowledgement that the choice between the singular and plural forms of "the people" meant the possible presence of at least two "national" constituent powers in Iraq.

84. Agamben, *Homo Sacer*, 12.

85. See the evidence presented before the WTI's Istanbul session: "The Use of Depleted Uranium (DU) Weapons," collectively presented by WTI participants from Japan; "The Health Effects of DU Weapons in Iraq," presented by Dr. Thomas Fasy of the Mount Sinai School of Medicine; and "The Ecological Implications of the War," presented by professor Joel Kovel of Bard College, all reprinted in Sökmen, *World Tribunal on Iraq*, 188–209, 209–212, and 340–353.

86. Balibar, "Is a Philosophy of Human Civic Rights Possible?," 318.

87. Balibar, "Is a Philosophy of Human Civic Rights Possible?," 318. Jacques Derrida discusses the impurity of "autofoundation" that attends the undecidable between "performative" and "constative" utterances in Jacques Derrida, "Declarations of Independence," *New Political Science* 15 (1987): 7–15.

88. Violence, in its constitutive nexus with the foundation of a juridical order, is discussed by Benjamin as that which is "rotten" in law. See Benjamin, "Critique of Violence," 286. Derrida deconstructs Benjamin's critique at length. See Jacques Derrida, "The Force of Law: 'The Mystical Foundation of Authority,'" in *Deconstruction and the Possibility of Justice,* ed. Drucilla Cornell et al. (New York: Routledge, 1992), 3–67. Another meditation on this theme, articulated as the "wild zone of power" is Susan Buck-Morss, *Dreamworld and Catastrophe: The Passing of Mass Utopia in East and West* (Cambridge, MA: MIT Press, 2000), 3.

89. Buck-Morss, "Sovereign Right and the Global Left." While Buck-Morss's usage of the couple "sovereign power" and "state power" seems to echo the distinct pair of "constituent power" and "constituted power," the latter is located in the tradition of classical "democratic theory" within which Böckenförde operates and which Buck-Morss strives to critique.

90. The reference is to Schmitt, Nomos *of the Earth*, 73, to a sentence I also discussed in this chapter.

91. Buck-Morss, "Sovereign Right and the Global Left." Emphasis in the original.

92. Buck-Morss, "Sovereign Right and the Global Left." Emphasis in the original

93. Buck-Morss, "Sovereign Right and the Global Left." Also see Scott Wilson, "Hamas Sweeps Palestinian Elections, Complicating Peace Efforts in Mideast," *Washington Post*, January 27, 2006, A01.

94. Buck-Morss, "Sovereign Right and the Global Left."

95. Buck-Morss, "Sovereign Right and the Global Left."

96. Buck-Morss, "Sovereign Right and the Global Left."

97. The "Coalition of the Killing" is how a WTI organizer once dubbed "the Coalition of the Willing" during a global WTI network coordination meeting in Istanbul (March 2005). Other global WTI network coordination meetings took place in Istanbul (twice), London, and Rome. Unofficial network coordination meetings were arranged in Mumbai (at the World Social Forum, January 2004) and Paris (at the European Social Forum, November 2003). Some organizers of the WTI network also had the chance to meet face-to-face at local WTI sessions they were able to attend.

98. I address some of the ambiguities attending WTI's auto-foundation in the first chapter.

99. Balibar, "Is a Philosophy of Human Civic Rights Possible?," 318.

100. These reflections by Benjamin comprise the postscript inscription at the very end of the book, in Turkish, collecting the proceedings of the World Tribunal on Iraq's culminating session in Istanbul. It reads: "Geçmisin gerçek yüzü hızla kayıp gider. Geçmis ancak göze göründügü o an, bir daha asla geri gelmemek üzere bir an için parıldadıgında bir görüntü olarak yakalanabilir." See Müge Gürsoy Sökmen, ed., *Irak Dünya Mahkemesi: Nihai Istanbul Oturumu, 23–27 Haziran 2005* (Istanbul: Metis Yayinlari, 2006), 492. The English translation is as follows: "The true picture of the past flits by. The past can be seized only as an image which flashes up at the instant when it can be recognized and is never seen again." Walter Benjamin, "Theses on the Philosophy of History," in *Illuminations*, ed. Hannah Arendt (New York: Schocken Books, 1986), 255.

101. Benjamin, "Critique of Violence," 283.

102. Benjamin, "Critique of Violence," 283.

103. Balibar, "Is a Philosophy of Human Civic Rights Possible?," 314. Emphasis added.

104. With the exception of a passing remark about the constitutional process attempted by the European Union.

105. For Benjamin, on the other hand, violence is the predicate of "parliamentary democracies" whose "principle of equaliberty" Balibar analyzes. Benjamin's unforgettable lament is most pertinent in this context: "When the consciousness of the latent presence of violence in a legal institution disappears, the institution falls into decay. In our time, parliaments provide an example of this. They offer the familiar, woeful spectacle because they have not remained conscious of the revolutionary forces to which they owe their existence. . . . They lack the sense that a lawmaking violence is represented by themselves." Benjamin, "Critique of Violence," 288.

106. Balibar, "Is a Philosophy of Human Civic Rights Possible?," 319.

107. Agamben, *Homo Sacer*, 11.

108. Unfortunately, in his ambitious study of the competing notions of "the nation," "the people," and "the human race" in French Revolutionary debates during the establishment of a new republic as a "nation-state," Istvan Hont does not discuss the status of the colonies that the revolution inherited during its efforts to found "popular sovereignty." Nor does he mention how the colonized figured into such debates about the "the nation," "the people," or "the human race" once they were posited as competing loci of sovereignty. See Istvan Hont, "The Permanent Crisis of Mankind: 'Contemporary Crisis of the Nation State' in Historical Perspective," in *Contemporary Crisis of the Nation State*? ed. John Dunn (Oxford: Oxford University Press, 1995), 166–232.

See especially the section "Against Nationalism: The Brotherhood of Peoples and the Expected Crisis of the 'Nation-State,'" 206–217. This long article is also presented as a chapter of Hont's book. See Istvan Hont, *Jealousy of Trade: International Competition and the Nation-State in Historical Perspective* (Cambridge, MA: Harvard University Press, 2005).

109. Hont, "Permanent Crisis of Mankind," 206–217.

110. Hont, "Permanent Crisis of Mankind," 207.

111. Let me note here that Hont finds the *grounds* of Hannah Arendt's allegedly "cosmopolitan" exposition of the perplexities of the rights of man, in her *The Origins of Totalitarianism*, to be "paradoxically identical" with the objections presented to the Declaration of the Rights of Man by the Jacobins, although Holt does not explain why he finds this situation—even if true—"paradoxical." See Hont, "Permanent Crisis of Mankind," 207. In any case, one would also have to read Arendt's *On Revolution*, in conjunction with *The Origins of Totalitarianism*, to support such a claim. Hannah Arendt, *On Revolution* (1963; London: Penguin Press, 1990); Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt Brace, 1951).

112. Hont, "Permanent Crisis of Mankind," 208.

113. Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford: Oxford University Press, 1999), 222–223. The extent to which Kant accepts Hobbes's conceptual framework—invalidating a universal sovereignty of the "human race" as desired in the early tenure of the French Revolution by Robespierre and Anacharsis Cloots—is revealed in Kant's "Second Definitive Article for a Perpetual Peace" (1795): "As nations, peoples can be regarded as single individuals who injure one another through their close proximity while living in a state of nature (i.e. independently of external laws). For the sake of its own security, each nation can and should demand that the others enter into a contract resembling the civil one and guaranteeing the rights of each. This would be a federation of nations, but it must not be a nation consisting of nations." Immanuel Kant, *Perpetual Peace and Other Essays*, trans. Ted Humphrey (Indianapolis, IN: Hackett Publishing Company, 1983), 115.

114. Susan Buck-Morss, "Hegel and Haiti," *Critical Inquiry* 26 (2000): 821–865, 857. Buck-Morss makes the meticulous argument that it was the historical Haitian Revolution, reported on by the newspapers and journals Georg Wilhelm Friedrich Hegel was regularly reading, which occasioned the idea of his master-slave dialectic. Buck-Morss argues, "beyond a doubt Hegel knew about real slaves and their revolutionary struggles. In perhaps the most political expression of his career, he used the sensational events of Haiti as the linchpin in his argument in the *Phenomenology of Spirit*" (852).

115. See Schmitt, Nomos *of the Earth*, in particular, part 3: Jus Publicum Europaeum, chapter 4: "Territorial changes," sections C and D: "Definitive Land Appropriation" and "Provisional Occupation."

116. Bhuta, "Antinomies of Transformative Occupation," 730.

117. Bhuta, "Antinomies of Transformative Occupation," 732.

118. For a detailed interpretation of relevant UN resolutions recognizing Iraq's occupation as *occupatio bellica* and the ambiguity of these resolutions, see Bhuta, "Antinomies of Transformative Occupation," 721–740. Significantly, Bhuta notes that the occupation of Iraq was a rare occasion of the explicit assertion and recognition of *occupatio bellica* as a legal title in the post–World War II period.

119. Schmitt, Nomos *of the Earth*, 208.

120. Bhuta, "Antinomies of Transformative Occupation," 731.

121. Schmitt observes that "where the common constitutional standard of European

constitutionalism was lacking, the legal institution of *occupatio bellica* was ineffective in practice." And what did this "ineffectivity" imply? He gives the following example: "When Russia occupied Ottoman territory in 1877, the area's old Islamic institutions were eliminated, and none other than Fedor Fedorovich Martens, the protagonist of the legal institution of *occupatio bellica* at the 1874 Brussels Conference, justified the immediate introduction of a new and modern social and legal order. He said that it was senseless for Russian military power to maintain the antiquated rules and conditions, whose elimination was a major goal of the Russo-Turkish war." With these two sentences Schmitt concludes his discussion of the last "achievement" of *jus publicum Europaeum*—the institution of the legal title *occupatio bellica*. See Schmitt, Nomos *of the Earth*, 209.

122. Schmitt, Nomos *of the Earth*, 205.

123. Schmitt, Nomos *of the Earth*, 206. Schmitt refers here to the nineteenth-century jurist Edgar Loening.

124. I must clarify the distinctness of my argument here from the following assertion by Schmitt, and its interpretation and implicit development by Bhuta. Schmitt asserts: "We now conclude our investigation of *occupatio bellica* with yet another word about the remarkable and essential relation between enemy occupation and a state of siege or state of exception within a constitutional state. In both cases, a situation that demands extraordinary measures, and thus, breaches the constitution should obtain, yet with the goal of maintaining the validity of this same constitution." Schmitt, Nomos *of the Earth*, 209. Borrowing this perspective from Schmitt, Bhuta posits that the character of Iraq's occupation *exceeds* the legally sanctioned title "belligerent occupation" (that is, *occupatio bellica*)—which would be analogous to a "commissarial dictatorship" in the context of a national constitution. He contends that the occupation must instead be recognized, in its analogous character, as a "sovereign dictatorship" qua a national constitution. See Bhuta, "Antinomies of Transformative Occupation," 721–740.

I do not suggest an analogy with "sovereign power" exercised through a state of emergency within the framework of a national constitutional order. Instead, I propose that within the current state of international law, where war as such is asserted to be illegal (I will address the exceptions to this later) the very title legally posited and recognized as *occupatio bellica*—inevitably the result of war—embodies a state of exception qua international law. International law does not simply withdraw from legally regulating an occupation that results from its own "suspension" or "violation."

125. See Sökmen, *World Tribunal on Iraq.*

126. Bhuta, "Antinomies of Transformative Occupation," 736.

Intermezzo

1. This was the characterization used on the World Tribunal on Iraq website, as well as in press kits prepared for the media. The WTI was not an "organization" in the conventional sense of the term: it had no central office, staff or membership, representatives or executives.

2. Simon Tormey, *Anti-Capitalism: A Beginner's Guide* (Oxford: Oneworld Publications, 2004), 165.

3. Michael Hardt, "Porto Alegre: Today's Bandung?," *New Left Review* 14 (2002): 112–118. Also published in *A Movement of Movements*, ed. Tom Mertes (London and New York: Verso, 2004), 230–237, which is the version I use.

4. Hardt, "Porto Alegre: Today's Bandung?," 236.

5. Tom Mertes, "Grass-Roots Globalism: A Reply to Michael Hardt," in Mertes, *A Movement of Movements*, 243. Emphasis added.

6. Compare Hardt's own depiction of the World Social Forum. See Hardt, "Porto Alegre: Today's Bandung?," 232.

7. These observations and others cited in this section (unless otherwise noted) are quoted from the archives of the WTI's global listserv, September 2005. The controversy here involved the B*Russell*s Tribunal's letter of protest to Amnesty International over the latter's campaign for a human rights–based constitution in Iraq. I addressed the substance of this debate in Chapter 3.

8. David Graeber, "The New Anarchists," in Mertes, *A Movement of Movements*, 213.

9. Hardt and Negri, *Multitude*.

10. Author's translation from Turkish. WTI-Istanbul listserv, July 2005.

11. Jo Freeman, "The Tyranny of Structurelessness." This pamphlet was first published by the women's liberation movement in the United States. It was reprinted in the *Berkeley Journal of Sociology* in 1970 and later issued as a pamphlet by Agitprop in 1972. Available online at http://www.jofreeman.com/joreen/tyranny.htm.

12. Emphasis added.

13. Excerpt from an e-mail to the global WTI listserv, September 17, 2005.

Chapter 4

1. Jacques Derrida and Lieven De Cauter, "For a Justice to Come." This interview was conducted on February 19, 2004, and screened two months later at the inauguration of the B*Russell*s Tribunal on April 14, 2004.

2. On file with the author.

3. For a close reading of this interview, see the introduction to Başak Ertür, "Spectacles and Spectres: Political Trials, Performativity and Scenes of Sovereignty" (PhD diss., Birkbeck, University of London, 2015).

4. Foucault, "On Popular Justice."

5. Başak Ertür, "Setting the Stage for Justice: Courts of Law and the Performance" (MA thesis, New School for Social Research, 2006), 30–33.

6. Charter of the B*Russell*s Tribunal, Article 2. On file with the author.

7. According to its website, Foreign Policy in Focus "aims to amplify the voice of progressives and to build links with social movements in the U.S. and around the world." See http://www.fpif.org/.

8. B*Russell*s Tribunal Commission, "Conclusions." Available at http://www.brussellstribunal.org/.

9. On file with the author.

10. *Ready for the New Imperial World Order?* Book manuscript published and distributed by the B*Russell*s Tribunal, April 14, 2004, Brussels. On file with the author.

11. As a B*Russell*s Tribunal activist noted at a global WTI coordination meeting before the culminating session in Istanbul, the success in Brussels in terms of extensive media coverage was based on grassroots work. She observed: "Belgium did not learn about the [BT] session because the media talked about it. It was the other way around. Because the people in Brussels were aware of and talking about the B*Russell*s Tribunal, the media had to talk about it." As anticipated at the WTI's founding meeting in 2003, the B*Russell*s Tribunal did indeed succeeded in achieving—perhaps more easily in a small city such as Brussels—the active support of wide sectors of "progressive" movements, trade unions, artists, independent individuals, and cultural institutions.

12. B*Russell*s Tribunal Commission, "Conclusions."

13. Amy Bartholomew and Jennifer Breakspear, "Human Rights as Swords of Empire?," *Socialist Register* 40 (2004): 125–145. A version of this article also appeared in Bartholomew, *Empire's Law*, 161–191 and in Sökmen, *World Tribunal on Iraq*, 76–83.

14. Habermas himself did not participate in any session of the WTI.

15. This is not to suggest that neoconservatives did or do not propose their own "criteria" for the legal and legitimate exercise of violence in global affairs.

16. Sound recording of the proceedings, on file with the author.

17. Cited in Carl Schmitt, *Political Theology* (Chicago: University of Chicago Press, 2005), 15.

18. Jürgen Habermas, "Interpreting the Fall of a Monument," *Constellations* 10 (2003): 364–370, 364. Translated by Max Pensky, this article originally appeared in the *Frankfurter Allgemeine Zeitung* on April 17, 2003, and was republished many times, including in Bartholomew, *Empire's Law*, 161–189. I will refer to the version published in *Constellations* unless otherwise stated.

19. See, for example, the reprint of this article in Jürgen Habermas, *The Divided West* (Oxford: Polity Press, 2006); Max Pensky, ed., *Globalizing Critical Theory* (Oxford: Rowman & Littlefield, 2005), 19–27; Jürgen Habermas, "Interpreting the Fall of a Monument," *German Law Journal* 4 (2003): 701–708; Bartholomew, *Empire's Law*, 161–189.

20. Habermas, "Interpreting the Fall of a Monument," 364.

21. William Rasch, "Human Rights as Geopolitics: Carl Schmitt and the Legal Form of American Supremacy," *Cultural Critique* 54 (2003): 120–147. Costas Douzinas's criticism of Habermas for "his over-hasty adoption of claims of neutrality of law and judges, after two centuries of legal demystification from Marxists, realist and critical legal perspectives" may be an understatement, yet is valid for many theorists and jurists of legal cosmopolitanism. Douzinas, *Human Rights and Empire*, 168.

22. Habermas, "Interpreting the Fall of a Monument," 365.

23. Habermas, "Interpreting the Fall of a Monument," 365.

24. For a textual deconstruction of discourses of interventionism as exemplified by NATO's mission in Kosovo "to save Albanians," see Anne Orford, "Muscular Humanitarianism: Reading the Narratives of the New Interventionism," *European Journal of International Law* 10 (1999): 679–711. For a consequent elaboration, including the case of East Timor, see Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge: Cambridge University Press, 2003).

25. However, let it be noted that the autonomy of Kosovo was not the only announced goal of the NATO mission.

26. Jürgen Habermas, "Bestiality and Humanity: A War on the Border Between Law and Morality," *Constellations* 6 (1999): 263– 272, 264. This article originally appeared as "Bestialität und Humanität" in *Die Zeit*, April 29, 1999, 1–8.

27. Habermas, "Bestiality and Humanity," 269.

28. Although the location of Habermas within a cosmopolitan tradition from Emmanuel Kant to Hans Kelsen may seem obvious, it is nevertheless interesting that he explicitly called upon this tradition—which he named "legal pacifism"—to argue that by participating in the NATO mission, the red-green coalition government of Germany had proved itself to be the first German government to take the Kantian tradition "seriously." Habermas, "Bestiality and Humanity," 263–264.

29. Habermas, "Bestiality and Humanity," 270–271.

30. Habermas, "Interpreting the Fall of a Monument," 364.

31. Habermas, "Bestiality and Humanity," 269.

32. Habermas, "Bestiality and Humanity," 265. A key feature of both *erga omnes* and *jus cogens* is that they are said to apply to all states whether or not they have signed a specific treaty. The state of Yugoslavia, Habermas presumably suggests, has breached its *erga omnes* obligations to "the international community" by committing crimes against humanity, thus authorizing other states to take action. Although how "norms" become actionable *erga omnes* or *jus cogens*—or what these norms consist of—is forcefully contested, piracy, slavery, and crimes against humanity are now commonly counted among them.

33. Habermas, "Bestiality and Humanity," translated by Franz Solms-Laubach as published in the *Global Library* at http://www.theglobalsite.ac.uk/press/011habermas.htm. Link no longer active.

34. Douzinas, *Human Rights and Empire*, 168n52, emphasis added. He continues, "many of these theorists [of cosmopolitan order] are opposed to the imperialist direction of the new world order. What they cannot explain, however, is how a court of law and judges with armies at their disposal could avoid becoming either an Imperial Court themselves or a tool in the Plans of Great Power" (169). As I noted in Chapter 2, it was not only states, or "Great Powers," but also those who politic under the rubric of global civil society—such as Human Rights Watch—who called for, and negotiated the terms of, Hussein's prosecution before and after the occupation of Iraq.

35. Benjamin, "Critique of Violence," 286.

36. This is why, Benjamin asserts, police violence should be considered at once as law making and law preserving. Benjamin, "Critique of Violence," 287.

37. See Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era* (Cambridge: Polity Press, 2001). Hardt and Negri theorize police action as the manifestation of an "imperial right" that transcends "international right" embodied by classical international law. See Hardt and Negri, *Empire*.

38. As will be discussed below, the concept of "law's empire"—or the global rule of law—is often pitted against "empire" and "empire's law" as if they constituted alternatives.

39. Martti Koskenniemi, "'The Lady Doth Protest Too Much': Kosovo, and the Turn to Ethics in International Law," *Modern Law Review* 65 (2002): 159–175, 159.

40. Habermas, "Bestiality and Humanity," 271.

41. The Commission was appointed for twelve months and met on five occasions: Stockholm, September 21, 1999; New York, December 5–6, 1999; Budapest, April 5–6, 2000; Florence, June 26–30, 2000; and Johannesburg, August 27–28, 2000, before issuing its "Kosovo Report."

42. The Independent International Commission on Kosovo, "The Kosovo Report," 2000. "Executive summary" available at http://reliefweb.int/sites/reliefweb.int/files/resources/F62789D9FCC56FB3C1256C1700303E3B-thekosovoreport.htm. Emphasis added. The findings and conclusions of the Commission are also published as a book. See Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford: Oxford University Press, 2000). The quotations to follow are from the Commission's "executive summary."

43. Independent International Commission on Kosovo, "Kosovo Report."

44. Independent International Commission on Kosovo, "Kosovo Report."

45. The Kosovo Commission was also "impressed by the relatively small scale of civilian damage considering the magnitude of the [NATO] war and its duration. It is further of the view that NATO succeeded better than any air war in history in selective targeting that adhered to

principles of discrimination, proportionality, and necessity, with only relatively minor breaches that were themselves reasonable interpretations of 'military necessity' in the context."

This statement is a clear example of how humanitarian and military logics of "measurement" and strategic reasoning can complement each other into indistinction. The standards expounded by humanitarian laws of war are a fertile ground on which the violence of military missions to liberate Kosovars and Iraqis alike can be legitimated through *the legal and humanitarian logics of proportionality and necessity*. See Talal Asad, *On Suicide Bombing*, 7–39; and David Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (Princeton, NJ: Princeton University Press, 2004), 272–296.

In a particular iteration of his "Reassessing International Humanitarianism: The Dark Sides" (in *International Law and Its Others*, ed. Anne Orford, 131–155), David Kennedy constantly switches from "we" to "they" and back to a "we" to refer to humanitarians. He observes: "humanitarians have come into rulership. They have become, in a word, political. . . . [J]ust when we have gotten in the door and found them speaking our language, we turn back. Drop this bomb, here? Kill those people there? No, we prefer to think of ourselves as outside of power, judging the powerful, opposing government, speaking truth to it with the truth of law and ethics" (151). Yet, I ask: when, and in which sense, humanitarians were ever *not* "political" even (and perhaps especially) when humanitarians have alleged for themselves an "anti-politics" on account of their defense of mere life?

46. Independent International Commission on Kosovo, "Kosovo Report."

47. Independent International Commission on Kosovo, "Kosovo Report."

48. International Commission on Intervention and State Sovereignty, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Ottawa, ON: International Development Research Centre, December 2001), http://responsibilitytoprotect.org/ICISS%20Report.pdf.

49. For an elaboration, see Ayça Çubukçu, "The Responsibility to Protect: Libya and the Problem of Transnational Solidarity," *Journal of Human Rights* 12 (2013): 40–48.

50. Timothy Garton Ash, "Libya's Escalating Drama Re-Opens the Case for Liberal Intervention," *Guardian*, March 3, 2011, http://www.guardian.co.uk/commentisfree/2011/mar/03/libya-escalating-drama-case-liberal-intervention.

51. Talal Asad, "Thinking About Terrorism and Just War," *Cambridge Review of International Affairs* 23 (2010): 3–24.

52. Reflecting on the Kosovo Commission, Richard Falk affirms that the guidelines it suggested for a "principled framework" of intervention "can be best understood as a rewriting of just war thinking to fit the beneficial actuality of humanitarian intervention in the contemporary world, while at the same time providing a framework that would restrict the use of force as much as possible." He continues: "The just war approach is attractive in such situations where the legal framework seems ill-adapted to changing values and conditions. The vagueness of just war criteria that invites criticism in other contexts becomes a strength when the perceived need is for greater flexibility in interpreting the constraints on the use of force." Falk, *Costs of War*, 31.

Contesting such "flexibility" afforded by just war theories and what he calls "a shallow and dangerous moralization," Martti Koskenniemi insists on the necessity of a "commitment to formalism" among international lawyers, arguing that "against the particularity of the ethical decision, formalism constitutes a horizon of universality." But Koskenniemi himself has been at the forefront of critical legal studies in international law, demonstrating the contingency of any legal determination and exposing what he has called international law's "indeterminacy" against the

grain of a perturbed "objective" formalism. In any case, I insist that formalism in international law is no more or less flexible, or in possession of a "horizon of universality," than just war theories and "moralism." Formalism can sanction as much violence as just war theories through structures of exception and necessity, which remain fundamental to it.

In this regard, consider Frédéric Mégret's argument that "it is important to acknowledge what many international humanitarian lawyers know but loath to concede, which is that the rhetoric of the Bush Administration is often mimicking the law. The US authorities' case is often not a case to violate or do away with the law, as much as it is a characteristically strict, almost legalistic interpretation of the law—one that may simply not partake of the relatively benign background understanding of the 'invisible college' of international humanitarian lawyers." Frédéric Mégret, "From 'Savages' to 'Unlawful Combatants': A Postcolonial Look at International Humanitarian Law's 'Other,'" in Orford, *International Law and Its Others*, 302. For Koskenniemi's critique of moralism and "the turn to ethics" referenced above, see Koskenniemi, "'The Lady Doth Protest Too Much.'" The "indeterminacy" of international law is exposed in Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Helsinki: Lakimiesliiton Kustannus, 1989).

53. See Anghie, *Imperialism, Sovereignty and the Making of International Law*, 297; and Nehal Bhuta, "A Global State of Exception? The United States and World Order," *Constellations* 10 (2003): 371–391, especially 389n62.

54. Independent International Commission on Kosovo, "Kosovo Report."

55. Habermas, "Interpreting the Fall of a Monument," 366.

56. Habermas, "Interpreting the Fall of a Monument," 370.

57. Habermas, "Interpreting the Fall of a Monument," 365. Emphasis added.

58. Habermas, "Interpreting the Fall of a Monument," 366.

59. Habermas, "Interpreting the Fall of a Monument," 366.

60. Habermas, "Interpreting the Fall of a Monument," 366. Koskenniemi finds it hard "to accept the (conservative) characterization of Europe as the representative of 'international law' against American 'hegemony,'" while he contends—unconvincingly—that Habermas takes "another direction" by claiming "a special status for rule-systems and rule-applying institutions against unmediated moral truths." I will reflect on this shortly. Martti Koskenniemi, "International Law as Political Theology: How to Read Nomos der Erde?," *Constellations* 11 (2004): 492–511, 506.

61. Habermas, "Interpreting the Fall of a Monument," 368.

62. Habermas, "Interpreting the Fall of a Monument," 369. I have reversed the original emphasis in this sentence.

63. Habermas, "Interpreting the Fall of a Monument," 366.

64. Anticipating the discussion to follow, the positing of "law's empire" in *resistance* to "empire's law" fails to respond convincingly to the following question: "Why should the assertion of American empire ever go beyond or be contrary to international law?" This question is formulated by Peter Fitzpatrick, yet he too is prepared to find *something* in international law that resists "empire." See Peter Fitzpatrick, "'Gods would be needed . . .': American Empire and the Rule of (International) Law," *Leiden Journal of International Law* 16 (2003): 429–466.

65. Clearly, this is a contestable position, in both theory and practice, at least since armies of the French Revolution began their liberating crusades in Europe. I addressed this point in Chapter 3.

66. Habermas, "Interpreting the Fall of a Monument," 369.

67. For a rare interpretation that *explicitly* "takes seriously the claim that neo-conservatism [of the Bush administration] represents a 'universalist' project" and highlights the convergences between "neo-conservatism" and "neo-liberal cosmopolitanism," see Ray Kiely, "What a Difference Does a Difference Make? Reflections on Neo-Conservatism as a Liberal Cosmopolitan Project," *Contemporary Politics* 10 (2004): 185–202.

68. Independent International Commission on Kosovo, "Kosovo Report."

69. Habermas, "Interpreting the Fall of a Monument"

70. Koskenniemi, "International Law as Political Theology," 506.

71. Koskenniemi, "The Fate of Public International Law: Between Technique and Politics," *Modern Law Review* 70 (2007): 1–30, 1, where he also makes the claim that "the fate of international law" is a matter of "re-establishing hope for the human species" (30). As will be discussed below, this sanguine assertion is unfounded by international law's colonial history.

72. For an attempt to rescue "without devotion" universalism's name through the figure of Saint Paul—against allegedly inimical contemporary developments such as "the renunciation of the law's transcendent neutrality" by various political movements, see Alain Badiou, *Saint Paul: The Foundation of Universalism* (Stanford, CA: Stanford University Press, 2003), 9.

73. Antony Anghie concludes his important study, which I discuss below, with a surprisingly optimistic call for "a truly universal international law." But then, rare is the international lawyer who does not. Anghie, *Imperialism, Sovereignty and the Making of International Law*, 320.

74. Koskenniemi argues that Carl Schmitt's "attack" on the universalism of liberal humanists "is not based upon a rejection of universalism but on an unarticulated distinction between a 'false' and a 'genuine' universalism." Rather than revealing some evidence of what he claims to be the "unarticulated universalism" in Schmitt, however, Koskenniemi reproduces his own distinction between "cynical" and "rational" empire—a distinction that assumes a decidability between a "genuine"/good and a "false"/bad faith in the universal. For this discussion of Schmitt, see Koskenniemi, "International Law as Political Theology," 495; and for the distinction between "rational" and "cynical" empire, see Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law: 1870–1960* (Cambridge: Cambridge University Press, 2002), 489–94, especially 492.

75. Luis Esleva and Sundhya Pahuja, "Between Resistance and Reform: TWAIL and the Universality of International Law," *Trade, Law, and Development* 3 (2011): 103–130.

76. This is not to suggest that the battle is waged only through ideas: clearly, an imperial consequence follows when a universalism is properly armed. What I wish to underline here is the latent notions of supremacy and hierarchy embedded in universalisms, whether they are articulated in domains of the "moral," "political," "cultural," "economic" "religious," or "artistic." The universalisms of the Left are no exception when it comes to notions of supremacy. The hierarchy embedded in universalisms is witnessed by international law's own concepts and tools such as *jus cogens* and *erga omnes* whose very function it is to establish certain institutions, rules, and "norms" as *supreme* to all others—and significantly, independent of any actor's *assent* to them. Cf. Koskenniemi, "Fate of Public International Law," 15.

77. Habermas, "Interpreting the Fall of a Monument," 69.

78. "A generalization about 'the Orient' drew its power from the presumed representativeness of everything Oriental; each particle of the Orient told of its Orientalness, so much so that the attribute of being Oriental overrode any countervailing instance. *An Oriental man was first an Oriental and only second a man*." Edward Said, *Orientalism* (New York: Vintage Books, 1979), 231. Emphasis added.

79. Habermas, "Interpreting the Fall of a Monument," 365. Apart from the imperial conduct of the United States *beyond* its territory, in designating it as "the peacemaker" on a cosmopolitan path since WWII, and in saluting its "role as guarantor of international rights," Habermas appears to ignore practices of the United States *within* its own borders, including legalized racial segregation—to recall only one example. In any event, Hannah Arendt offers a different interpretation of US foreign policy after WWII. "Fear of revolution has been the hidden *leitmotif* of postwar American foreign policy in its desperate attempts at stabilization of the *status quo*, with the result that American power and prestige were used and misused to support obsolete and corrupt political regimes that long since had become objects of hatred and contempt among their own citizens." Hannah Arendt, *On Revolution*, 217.

80. Michael Ignatieff, "Getting Iraq Wrong," *New York Times Magazine*, August 7, 2007.

81. Michael Ignatieff, "The Burden," *New York Times Magazine*, January 5, 2003.

82. Michael Ignatieff, "I Am Iraq," *New York Times*, March 23, 2003.

83. Ignatieff, "I Am Iraq."

84. Michael Ignatieff, "The Year of Living Dangerously," *New York Times Magazine*, March 14, 2004.

85. Bartholomew, "Empire's Law and Human Rights as Swords of Empire," in Sökmen, *World Tribunal on Iraq*, 78.

86. Bartholomew, "Empire's Law and Human Rights as Swords of Empire," 77.

87. Thomas Cushman, "Introduction," in Cushman, *Matter of Principle*, 10

88. Bartholomew, "Empire's Law and Human Rights as Swords of Empire," 78.

89. NATO defines its mission through four concepts: solidarity, freedom, security, and transatlantic link. See http://www.nato.int/.

90. China Miéville interprets this process as the "culmination of the universalizing and abstracting tendencies in international–legal–capitalism." China Miéville, *Between Equal Rights: A Marxist Theory of International Law* (Chicago: Haymarket Books, 2005).

91. Fitzpatrick, "'Gods would be needed,'" 449.

92. Anghie, *Imperialism, Sovereignty and the Making of International Law*, 315.

93. Justin Rosenberg, *Empire of Civil Society: A Critique of the Realist Theory of International Relations* (London: Verso, 1994), 163. Original emphasis.

94. Anghie, *Imperialism, Sovereignty and the Making of International Law*, 5.

95. See Anghie, *Imperialism, Sovereignty and the Making of International Law*, chapter 2.

96. Their historical perspective enables both Anghie and Rosenberg to highlight the extent to which the starting point of their disciplines—formally equal sovereign states—consistently disallows the emergence and sustenance of questions that concern the very constitution of "sovereignty" through the colonial encounter (Anghie) and a globalizing capitalism (Rosenberg).

97. Held, *Cosmopolitanism: Ideas and Realities* (Cambridge: Polity, 2010), xi. Emphasis added.

98. Held, *Cosmopolitanism*, xi. Note that a universal jurisdiction declared over *all human activity* necessitates an anthropology of "humanity" in order to first define, and then police, "the boundaries which no human activity should cross."

99. Rosenberg finds that "the problematic of anarchy, so long regarded as the *differentia specifica* of IR [international relations] theory, turns out instead to be perhaps the central preoccupation of modern social thought." Rosenberg, *Empire of Civil Society*, 158. This finding should come as no surprise if one considers that the production, maintenance, and comprehension of "order"—a central preoccupation of modern social thought—is the mirror image of "the

problematic of anarchy" in international relations. In this regard, it is not irrelevant that Hans Morgenthau, considered the founder of international relations, was a decided exile from the field of international law with its central preoccupation with "order." On Morgenthau, see Koskenniemi, *Gentle Civilizer of Nations*, 482–483.

100. Anghie, *Imperialism, Sovereignty and the Making of International Law*, 7.

101. Anghie, *Imperialism, Sovereignty and the Making of International Law*, 111.

102. Anghie, *Imperialism, Sovereignty and the Making of International Law*, 112. Emphasis added.

103. Anghie, *Imperialism, Sovereignty and the Making of International Law*, 109.

104. Anghie, *Imperialism, Sovereignty and the Making of International Law*, 273.

105. In this context, it appears contestable that decolonization has indeed achieved "the decolonization of international law," and vice versa. Cf. Anghie, *Imperialism, Sovereignty and the Making of International Law*, 109–110.

106. Anghie, *Imperialism, Sovereignty and the Making of International Law*, 254.

107. On human rights law as an articulator of imperialism, see Anghie's chapters on "Governance and globalization, civilization and commerce" and "On making war on the terrorist: imperialism as self-defense." Anghie, *Imperialism, Sovereignty and the Making of International Law*, 244–272 and 273–311, respectively.

108. Anghie, *Imperialism, Sovereignty and the Making of International Law*, 314. On the other hand, note that Ann Laura Stoler challenges received accounts of "what European Empires were known to be" in order to highlight the features of "European Empires" which *correspond* to "the unclarified sovereignties of U.S. imperial breadth." Ann Laura Stoler, "On Degrees of Imperial Sovereignty," *Public Culture* 18 (2006): 125–146.

109. Hardt and Negri, *Empire*, 8–9.

110. Hardt and Negri, *Empire*, 9; Hardt and Negri, *Multitude*, xvii.

111. Hardt and Negri, *Multitude*, xii.

112. Thus, Bartholomew asks, "is the global spread of 'law's empire' in the post–World War II era now to be definitely replaced by 'Empire's Law,' by the only power capable of constituting such a wrongheaded global politics—the American Empire?" Bartholomew, "Empire's Law and Human Rights as Swords of Empire," 81.

113. Hardt and Negri, *Multitude*, 5–9.

114. Hardt and Negri, *Multitude*, 6. Emphasis original.

115. Hardt and Negri, *Multitude*, 7. Emphasis original.

116. Benjamin, "Theses on the Philosophy of History." Notably, Foucault's lectures in "*Society Must Be Defended*," too, position war as the rule rather than the exception in relation to politics. Michel Foucault, "*Society Must Be Defended*": *Lectures at the Collège de France, 1975–76*, ed. M. Bertani et.al. (New York: Picador, 2003). These lectures by Foucault inspire the name of this chapter.

117. Hardt and Negri, *Multitude*, 13.

118. Hardt and Negri, *Multitude*, 8.

119. Stoler, "On Degrees of Imperial Sovereignty," and Bhuta, "A Global State of Exception?" The interpretation presented by Hardt and Negri of US exceptionalisms is curious. I suspect this is not unrelated to what Rasch observes as the "residual humanitarian liberalism [in Hardt and Negri's *Empire*] similar to [John] Rawls and Habermas, as can be seen, for example, in their at best ambivalent evaluation of Woodrow Wilson." Rasch, "Human Rights as Geopolitics," 145.

120. Anghie, *Imperialism, Sovereignty and the Making of International Law*, 314. Emphasis added.

121. Schmitt, *Political Theology*, 5–16.

122. Anghie, *Imperialism, Sovereignty and the Making of International Law*, 4.

123. David Held, "Violence, Law and Justice in a Global Age," in *Debating Cosmopolitics*, ed. Daniele Archibugi (London: Verso, 2003), 184–203, 191.

124. Held, "Violence, Law and Justice in a Global Age," 195. Emphasis added.

125. Fine, "Cosmopolitanism and Violence," 61.

126. Craig Calhoun, "The Class Consciousness of Frequent Travelers: Towards a Critique of Actually Existing Cosmopolitanism," in Archibugi, *Debating Cosmopolitics*, 87.

Quoting George W. Bush's September 20, 2001 speech—in which he claimed, "this is not, however, just America's fight. And what is at stake is not just America's freedom. This is civilization's fight"—Leftist scholar Robin Blackburn comments, "it might seem strange that a world body, such as the UN, was not entrusted with the fight" (152). Blackburn too regrets that "the obsessively reiterated discourse of war directed attention away from what could have been an international police action" (151). And toward the latter end, he proposes the establishment of "a UN secretariat of terrorism [which] should have its own staff and should be able to prompt and require compliance from the police in any member state" (174), whereby "the existence of such a supranational agency would hopefully tend to pre-empt and contain terrorist activity" (175). This recommendation demonstrates well how far "the Left" has been willing to go in advocating "law's empire." See Robin Blackburn, "The Imperial Presidency and the Revolutions of Modernity," in Archibugi, *Debating Cosmopolitics*, 141–183.

127. Habermas, "Bestiality and Humanity."

128. The reference here is to Norman Geras the Marxist scholar who made the argument that "It is, in any event, such realities—the brutalization and murder by the Baathist regime of tens upon tens of thousands of its own nationals—that the recent war has brought to an end. It should have been supported for this reason." Norman Geras, "A Moral Failure: Why Did so Many on the Left March to Save Saddam Hussein?," *Wall Street Journal*, August 4, 2003.

129. On the transformative nature of the occupation of Iraq, see Bhuta, "Antinomies of Transformative Occupation." Bhuta posits that the character of Iraq's occupation exceeds the legally sanctioned title of "belligerent occupation" (explicitly claimed by the US and UK governments as occupying forces)—which would be analogous to a "commissarial dictatorship" in the context of a national constitution. He contends that the occupation must instead be recognized, in its analogous character, as a "sovereign dictatorship" qua a national constitution. This categorization of two different kinds of "state of emergency"—temporary and permanent, respectively—was developed by Carl Schmitt in the context of debates about the Weimar constitution.

130. Bartholomew, "Empire's Law and Human Rights as Swords of Empire," 78–79. Emphasis added.

131. Jean Cohen, "Whose Sovereignty? Empire versus International Law," *Ethics and Foreign Affairs* 18 (2004): 1–24.

132. Cohen, "Whose Sovereignty?," 4.

133. Cohen, "Whose Sovereignty?," 24.

134. Cohen, "Whose Sovereignty?," 3.

135. Cohen, "Whose Sovereignty?," 13.

136. Cohen, "Whose Sovereignty?," 13.

137. Cohen, "Whose Sovereignty?," 16–17. Emphasis original.

138. Hardt and Negri, *Multitude*, 276. In this sentence, what I suggest within the parentheses is this: it is not an act "outside" or "against" international law when the US nation-state (or any other) chooses not to ratify the ICC statute. This is a *legal* prerogative accorded to nation-states on account of their sovereignty.

139. Hardt and Negri, *Multitude*, 277.

140. Hardt and Negri, *Multitude*, 277.

141. Hardt and Negri, *Multitude*, 297.

142. Hardt and Negri, *Multitude*, 289.

143. Hardt and Negri, *Multitude*, 353.

144. Issa Shivji, "Law's Empire and Empire's Lawlessness: Beyond the Anglo-American Law," in Sökmen, *World Tribunal on Iraq*, 87.

145. See Ayça Çubukçu, "Thinking Against Humanity," *London Review of International Law* 5 (2017): 251–267.

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Numbers in italics refer to figures.

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