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# **IRAQI WOMEN AS LEGALLY VULNERABLE SUBJECTS: APPLYING GENDER-MAINSTREAMING AND VULNERABILITY THEORY IN THE POST-CONFLICT IRAQI STATE**

## **ABSTRACT**

*As the United States mobilized troops to invade Iraq in the spring of 2003, the national agenda at the forefront of the charge was “Operation Iraqi Freedom.” The push to “liberate” the Iraqi citizen from the oppressive Ba’athist State capitalized on a newly created United Nations Security Council Resolution: Resolution 1325. As a peace-building mechanism, Resolution 1325 proposes that in order to reconstruct a nation following conflict, increased numbers of women must be incorporated into policy, government, and police forces. This form of gender mainstreaming is a tenet of liberal feminism that relies on the “add women and stir” approach to gendered equality. However, when applied in post-conflict Iraq, women did not experience the expected gendered equality envisioned by Resolution 1325. Instead, these reconstruction techniques ignored the crumbling state infrastructure and attempted to impose western ideals of equality, leaving Iraqi women only more vulnerable and susceptible to gender based violence and retaliation, disease, poverty, and death. This Comment argues that in post-conflict Iraq, Resolution 1325 was not only apathetically applied, but was, and remains to be, a wholly ineffective tool to reconstruct war-torn nations. This Comment therefore proposes an alternative to the gender-mainstreaming policies of Resolution 1325, turning instead to Martha Fineman’s Vulnerability Theory. Rather than attempting to achieve gendered justice by increasing the numbers of women in reconstruction, Vulnerability Theory operates within the post-conflict state to assert that the state must be responsive to the root causes of suffering and discrimination experienced by vulnerable populations following armed conflict, and must rebuild base economic, political, and social infrastructure first, understanding that factors such as poverty, diminished access to life-saving resources, unemployment and insecurity all intersect with gender to perpetuate conditions of vulnerability, suffering, and violence.*

## INTRODUCTION

The year was 2005, two years following the U.S. invasion of Iraq, when Dr. Zeena Al-Qushtaini was abducted from her workplace by six armed gunmen.<sup>1</sup> Ten days following her abduction, Zeena's body appeared on the side of a highway, a few miles south of Baghdad, Iraq.<sup>2</sup>

Known to her friends and colleagues as "Lady Zeena," Dr. Al-Qushtaini was a women's activist, divorcee, business partner, and single mother with a full-time job at a local pharmacy.<sup>3</sup> According to friends, Dr. Al-Qushtaini always wore the "latest fashion," preferring Western clothing, manicured nails, and highlights over traditional, cultural dress.<sup>4</sup> However, when her body was discovered, Dr. Al-Qushtaini's blue jeans were replaced by a long black gown known as an *abaya*, and her highlighted hair was concealed under a headscarf.<sup>5</sup> Her body was displayed as a warning by extremists to any and all women who attempted to subvert traditional culture and religion. The note pinned to her chest claimed "[s]he was a collaborator against Islam."<sup>6</sup>

Dr. Al-Qushtaini's story does not stand alone. Her name joined a long list of Iraqi women activists violently targeted and silenced since the U.S. invasion in 2003.<sup>7</sup> Ongoing gender-based violence experienced by Iraqi women exists as a

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<sup>1</sup> Eve Conant, *Iraq's Hidden War*, NEWSWEEK (Mar. 6, 2005, 7:00 PM), <http://www.newsweek.com/iraqs-hidden-war-114807>.

<sup>2</sup> Marjorie P. Lasky, *Iraqi Women Under Siege*, REPORT (CODEPINK: Women for Peace, Venice, C.A. & Global Exchange, San Francisco, C.A.), Apr. 2006, at 8.

<sup>3</sup> Conant, *supra* note 1; *Windows of Opportunity: Pursuit of Gender Equality in Post-War Iraq*, BRIEFING PAPER (Women for Women Int'l, Washington, D.C.), Jan. 2005, at 6.

<sup>4</sup> *Id.*; BARRY RUBIN, *THE MIDDLE EAST: A GUIDE TO POLITICS, ECONOMICS, SOCIETY AND CULTURE* 627 (2015).

<sup>5</sup> *Windows of Opportunity: The Pursuit of Gender Equality in Post-War Iraq*, *supra* note 3.

<sup>6</sup> Lasky, *supra* note 2, at 9.

<sup>7</sup> *Windows of Opportunity: The Pursuit of Gender Equality in Post-War Iraq*, *supra* note 3. This list includes countless other powerful women such as Salwa (Program Assistant, Coalition Provisional Authority, helped establish women's centers in the southern governorates, murdered), Majida (member of Sadr City District Advisory Council (DAC), kidnapped and killed), Rwaida (translator for U.S. officials, murdered), Huda (Outreach Department Manager, International Internet Network, killed on the way home from work), Liqa'a (staff member of Iraq's Al Sharqya TV, shot to death), Aamal (consultant in an Iraqi ministry, shot and killed with two of her bodyguards), Wijdan (businesswoman, activist, and candidate for January 2005 elections, murdered). *Id.*

daily reality, as Layla A., an Iraqi woman working in an international humanitarian relief agency, relates:<sup>8</sup>

*Women are afraid of raising their voices because of fear . . . . Women are targeted . . . . Women are threatened . . . . Women are being attacked and killed . . . . Death is an everyday occurrence.*<sup>9</sup>

Predating the U.S. occupation, Iraq provided more rights and freedoms for women and girls than most of its neighboring nations.<sup>10</sup> Although the Ba'athist regime and economic sanctions impacted various areas of the woman's position in the state, Iraqi women were active participants in society before the occupation.<sup>11</sup> Beginning in the 1970s, Saddam Hussein built a strong base of Sunni supporters by introducing a number of progressive policies that extended women's rights, free access to education and other social benefits.<sup>12</sup> Following the lifting of the Organization of Petroleum Exporting Countries oil embargo, Iraq experienced an unprecedented boom and rapidly developed due to a steep rise in global oil prices.<sup>13</sup> The newly flourishing economy, therefore, ensured that most of the Iraqi population enjoyed high living standards.<sup>14</sup> In the face of economic prosperity and the expansion of the Iraqi middle class, the state turned its attention towards social advancement, most notably the advancement of Iraqi women by eradicating illiteracy and incorporating them into the labor force.<sup>15</sup>

Thus, beginning in the mid-1970s, the Iraqi government began taking steps toward an educated class of Iraqi women.<sup>16</sup> Under the Ba'athist state, the family unit created the foundation of modern citizenship in which the state's "developmental and modernizing social policies targeted the family by issuing legislation that provided the legal underpinnings for women's autonomy[.]"<sup>17</sup> The Ba'athist state subsequently adopted the role of protector to mothers and

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<sup>8</sup> NADJE AL-ALI & NICOLA PRATT, WHAT KIND OF LIBERATION? WOMEN AND THE OCCUPATION OF IRAQ 77 (2009).

<sup>9</sup> *Id.* (emphasis added).

<sup>10</sup> Lasky, *supra* note 2, at 2.

<sup>11</sup> *Id.*

<sup>12</sup> Michael Massing, *The Moral Quandary: Anti-Imperialism vs. Humanitarianism*, THE NATION, Jan. 6, 2003, at 18 (citing Iraqi scholar and feminist Nadjé Al-Ali who cautions that while the Ba'athist regime under Saddam Hussein committed uncountable acts of atrocity that must be recognized and accounted for, the status of women in his regime present a much more complicated and complex picture).

<sup>13</sup> Nadjé Al-Ali, *Reconstructing Gender: Iraqi Women between Dictatorship, War, Sanctions and Occupation*, 26 THIRD WORLD Q. 739, 744 (2005).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 744–45.

<sup>17</sup> DINA RIZK KHOURY, IRAQ IN WARTIME: SOLDIERING, MARTYRDOM AND REMEMBRANCE 172 (2013).

children both legally and socially.<sup>18</sup> Additionally, in 1974, the Ba'athist government decreed that all university graduates, including women, would be guaranteed automatic employment immediately following the conferral of their degrees.<sup>19</sup> Especially in fields of study such as health care, teaching and education, the Iraqi state required graduates to obtain employment in their respective professions promptly following graduation.<sup>20</sup> The image of university-educated women working outside the home not only became commonplace, but it became expected as an integral part of social advancement.<sup>21</sup>

The above comparison between the story of Dr. Zeena Al- Qushtaini and the historical background of Iraqi women in the Ba'athist state clearly details that something that sparked Iraqi women's transition from mobile, active members of society to targets of intense, gender-based violence and vulnerability occurred between Saddam Hussein's regime and the status of the Iraqi state today. This Comment argues that the shift began in 2003 with the U.S. led invasion of Iraq and the implementation of interventionist policies, specifically gender mainstreaming via United Nations Security Council Resolution 1325 (Resolution 1325 or the Resolution). This Comment proposes that by attempting to ameliorate the condition of Iraqi women via gender mainstreaming policies, the U.S. ignored the crumbling social, political and economic state infrastructure that deeply impacted the survival of Iraqi women and the impact westernizing policies would have on Iraqi women, leaving them more vulnerable and susceptible to gender-based violence.

Therefore, in Part I, this Comment traces the creation of Resolution 1325 and the philosophy of gender mainstreaming that drives the Resolution in international conflict. Part II subsequently examines why the U.S. turned to gender mainstreaming policies by tracing U.S. involvement in Iraq and the rhetoric shift from the search for nuclear weapons to the mission of human rights protection in order to retain international support for occupation. In Part III, this Comment argues that the shift to gender mainstreaming policies and rhetoric via Resolution 1325 had devastating consequences for Iraqi women, rendering them more vulnerable to gender-based suffering and violence. Part IV, therefore, argues that gender mainstreaming cannot be used as a one size fits all policy to

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<sup>18</sup> *Id.*

<sup>19</sup> Al-Ali, *supra* note 13.

<sup>20</sup> *Id.* at 744–45.

<sup>21</sup> *Id.* at 745. While political indoctrination was a strong motivation behind the incorporation of women in the labor force as political party members and leaders were recruited from the workplace, Iraqi women became among the most educated, literate and professionally qualified in the entire region. *See id.*

promote gendered rights in areas of international conflict, and instead proposes that Vulnerability Theory could play a crucial role in post-conflict settings by leading to policies that would help ameliorate structural sources of gendered vulnerability without exposing women to heightened gender-based violence.

## I. U.N. RESOLUTION 1325: AN OVERVIEW

### A. *The Road to Resolution 1325*

On October 31, 2000, the United Nations Security Council unanimously passed Resolution 1325 on Women, Peace and Security.<sup>22</sup> Resolution 1325 mainstreamed women into post-conflict resolution, peacebuilding and increased participation in conflict prevention.<sup>23</sup> Resolution 1325 is largely viewed as a momentous breakthrough for women in international relations, and a highly significant piece of international legislation for women's rights on the political grassroots and international stage.<sup>24</sup> However, many women in post-conflict communities, grassroots movements, and political organizations argue that the gender mainstreaming that motivates such policies render them fundamentally ineffective when implemented in foreign theaters of conflict.

Both the U.N. Charter and the Universal Declaration of Human Rights speak in terms of equal rights for men and women. A special commission, The Commission on the Status of Women was established to implement this guarantee.<sup>25</sup> In 1995, the Beijing Conference convened and produced the Beijing Declaration and Platform for Action, which was adopted unanimously by 189 countries and built on political agreements aimed at securing the equality of women with men in law and in practice.<sup>26</sup> Areas of concern addressed in the declaration included: human rights, violence against women, health, economic empowerment and special concerns of female children.<sup>27</sup> The Declaration condemned forced abortions, forced sterilizations, female genital mutilation, dowry burning, and sexual harassment and domestic violence on an international

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<sup>22</sup> Nicola Pratt & Sophie Richter-Devroe, *Critically Examining UNSCR 1325 on Women, Peace and Security*, 13 INT'L FEMINIST J. POL. 489, 489 (2011).

<sup>23</sup> *Id.* at 493; Al-Ali, *supra* note 13, at 740.

<sup>24</sup> Pratt & Richter-Devroe, *supra* note 22, at 490; Torunn L. Tryggestad, *Trick or Treat? The UN and Implementation of Security Council Resolution 1325 on Women, Peace, and Security*, 15 GLOB. GOVERNANCE 539, 539–40 (2009).

<sup>25</sup> Elizabeth F. Defeis, *The United Nations and Women – A Critique*, 17 WM. & MARY J. WOMEN & L. 395, 397 (2011).

<sup>26</sup> *Id.* at 398.

<sup>27</sup> *Id.* at 398–99.

scale.<sup>28</sup> Inspired by the Beijing Conference, the NGO Working Group on Women and Armed Conflict lobbied the U.N. for a security council resolution to address the issue of women in conflict and peace negotiations.<sup>29</sup> In response, Namibia agreed to sponsor a session on Women, Peace and Security. A week following the session, The United Nations Security Council unanimously passed Resolution 1325.<sup>30</sup>

### *B. The Gender Mainstreaming Approach of Resolution 1325*

Resolution 1325 takes a two-pronged approach to gender mainstreaming in order to address the needs of women affected by armed conflict. The concept of gender mainstreaming was first introduced within the U.N. system by the Economic and Social Council in 1997 and defined as follows:

Mainstreaming a gender perspective is the process of assessing the implication for women and men of any planned action, including legislation, policies and programmes, in all area and at all levels. It is a strategy for making women as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.<sup>31</sup>

The Resolution first highlights women's agency as peacemakers and agents of resolution. Resolution 1325 first demands the inclusion of women in designing responses to conflict and injects a gender perspective into humanitarian responses and post-conflict reconstruction. Second, the Resolution draws focus to women as victims of sexual assault as a weapon of war.<sup>32</sup>

Therefore, Resolution 1325 is an addition to an already growing body of U.N. foreign policy that links "the attainment of peace and security with the achievement of equality between women and men" so that a gender perspective is present in all post-conflict resolution missions.<sup>33</sup> As a piece of international feminist policy, Resolution 1325 is firmly grounded in liberal feminist and

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<sup>28</sup> *Id.*

<sup>29</sup> Tryggestad, *supra* note 24, at 545.

<sup>30</sup> Pratt & Richter-Devroe, *supra* note 22, at 492.

<sup>31</sup> Susan Willett, *Introduction: Security Council Resolution 1325: Assessing the Impact on Women, Peace and Security*, 17 INT'L PEACEKEEPING 142, 148 (2010).

<sup>32</sup> Fionnuala D. Ní Aoláin, *Advancing Women's Rights in Conflict and Post-Conflict Situations*, 104 AM. SOC'Y INT'L L. 568, 569–70 (2010).

<sup>33</sup> Hilary Charlesworth, *Not Waving but Drowning: Gender Mainstreaming and Human Rights in the United Nations*, 18 HARV. HUM. RTS J. 1, 15 (2005).

equality-based initiatives for peacebuilding. According to feminist theorist Susan Willett, 1990s feminists throughout the Beijing Conference who were “committed to gender analysis, and nongovernment women’s groups inspired by more liberal interpretations of feminism . . . press[ed] for greater awareness of the gendered inequality in international solutions to conflict.”<sup>34</sup> Therefore, gender mainstreaming became a foundational component initially formulated within the Beijing Platform in order to achieve gender equality.<sup>35</sup>

However, feminist scholar Taria Vāryrynen argues that this dominant liberal feminist discourse establishing peace through equality inevitably imposes severe limits on gender mainstreaming in peace and security policies.<sup>36</sup> The Resolution touts giving attention to the specific needs of women and girls post-violence, supporting grassroots women’s initiatives and protecting the human rights of women and girls while constructing the building blocks of a new, democratic society.<sup>37</sup> Yet, feminist scholar Hilary Charlesworth criticizes this act of gender mainstreaming stating, “[i]n this sense, Resolution 1325 presents gender as all about women and unconnected with masculine identities in times of conflict and the violent patterns of conduct that are accepted because they are coded as male.”<sup>38</sup> By remaining firmly rooted in masculine identities, international feminist scholar Susan Willett concurs that “gender mainstreaming in peacekeeping will consciously be contained at the level of a rhetorical norm, within a highly masculinized and militarized hierarchy[.]”<sup>39</sup>

Therefore, Resolution 1325 grafts gender mainstreaming onto existing hierarchies and gender-based power binaries where men continue to be portrayed as protectors and policy-makers and women are portrayed as victims in need of protection.<sup>40</sup> Thus, a woman’s active presence in the male dominated sphere of conflict resolution and peacemaking fills only a “tokenistic [space]” in the male dominant discourse of militarism and war.<sup>41</sup> Indeed, if gender mainstreaming is to extend beyond the liberal feminist interpretation of equality via the “add women and stir” method of incorporation, gendered justice cannot be achieved simply through presence.<sup>42</sup> While increasing women’s

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<sup>34</sup> Willett, *supra* note 31, at 148.

<sup>35</sup> Amy Barrow, ‘[It’s] Like a Rubber Band.’ *Assessing UNSCR 1325 as a Gender Mainstreaming Process*, INT’L J.L. CONTEXT 51, 51 (2009).

<sup>36</sup> Willett, *supra* note 31, at 150.

<sup>37</sup> Charlesworth, *supra* note 33, at 15.

<sup>38</sup> *Id.*

<sup>39</sup> Willett, *supra* note 31, at 143.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 144.

<sup>42</sup> Barrow, *supra* note 35, at 60.

representation in nation building, peace keeping and reconstruction implies the achievement of equality, if women's unique voices, positions and experiences are not articulated and addressed, equality is only achieved symbolically.<sup>43</sup>

According to feminist scholar Amy Barrow, the implementation of Resolution 1325 in Afghanistan via the construction of humanitarian aid agencies for women ultimately failed by promoting "add women and stir" over the unique voices and experiences of Afghani women.<sup>44</sup> Many openly supported the few benefits of a limited health care provision for women over such political statements because by creating more expansive health care for women in relation to Resolution 1325, such a policy could promote women's access to health.<sup>45</sup> However, on the flip side, taking a stance and highlighting the women's plight may provoke retaliation by Taliban forces, putting women at greater risk.<sup>46</sup> Therefore by ignoring the social realities of women in the social, political, economic and environmental context of armed conflict, gender mainstreaming instead endangered more women than it assisted.

Similarly, gender mainstreaming policy initiatives left women far more vulnerable in Iraqi communities during and following the U.S. invasion of Iraq. In order to examine the consequences of gender mainstreaming policies in Iraq, this Comment will trace U.S. involvement in Iraq from the beginning rhetoric justifying U.S. intervention, to the shift towards rights-based intervention

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<sup>43</sup> *Id.* at 54–55. Since its implementation, Resolution 1325 has been used in a multitude of conflict and post-conflict situations with moderating degrees of success. *See* Pratt & Richter-Devroe, *supra* note 22, at 497. In Serbia, Resolution 1325 is used by the feminist network, Women in Black, to break with traditional militarism of post conflict resolution. *Id.* This interpretation of resolution is "not mirrored in the governmental Serbian National Action Plan nor in the agenda of the UNDP's South-Eastern European Arms Clearinghouse." *Id.* In Palestine, Grassroots women's organizations are finding Resolution 1325 marginally useful in their work on women's security and empowerment, but structural conflict between Israel and Palestine is so pervasive that Resolution 1325 cannot compensate for the tension, or yield tangible results. *Id.* Conversely, Resolution 1325 has yielded tangible results in Nepal, however grassroots women's organizations argue that the "women, peace and security" delegitimizes women's agency because the focus is on the armed conflict, not on the structural inequalities and violence that most strongly impact women's agency including rape, trafficking, and gendered attacks. *Id.*

<sup>44</sup> Barrow, *supra* note 35, at 59.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

policies and the implementation of gender mainstreaming policies under Resolution 1325.

## II. U.S. RHETORIC SHIFTS THROUGH INVASION AND INTERNATIONAL EMBARRASSMENT

### A. *Early Rhetoric and Weapons of Mass Destruction*

Justification for the U.S.'s invasion of Iraq did not initially rest on gender mainstreaming rhetoric. Instead, as early as January 2002, speculation stirred in the international community surrounding an impending U.S. invasion of Iraq in order to disarm the country and prevent any further development of weapons of mass destruction (WMDs).<sup>47</sup> On November 8, 2002, the U.N. Security Council adopted Resolution 1441 stating that not only was Iraq in violation of past resolutions, but also requiring immediate compliance with disarmament directives.<sup>48</sup> Additionally, the Resolution required Iraq to allow "immediate, unimpeded, unconditional and unrestricted access" to U.N.-appointed inspectors as they searched "facilities, buildings, equipment, records, and means of transport which they wish[ed] to inspect" for WMDs.<sup>49</sup> The Resolution also contained a thinly veiled threat: Iraq would face "serious consequences" if it did not comply with the Resolution or demands to disarm.<sup>50</sup>

Pursuant to Resolution 1441, the U.N. deployed weapons inspectors to the country to ensure compliance from November 27, 2002 through March 18, 2003.<sup>51</sup> In the midst of heightening hostilities, President George W. Bush stood before Congress for his State of the Union address on January 28, 2003 and declared, "[Hussein] pursued chemical, biological, and nuclear weapons, even while inspectors were in his country. . . . Year after year, Saddam Hussein has gone to elaborate lengths, spent enormous sums, taken great risks to build and keep weapons of mass destruction."<sup>52</sup> On February 5, 2003, Secretary of State Colin Powell briefed the U.N. Security Council once more, declaring that Iraq continued to be noncompliant in the disarmament and inspection process.<sup>53</sup> At

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<sup>47</sup> Daryll Kimball, *Disarming Saddam — A Chronology of Iraq and UN Weapons Inspections from 2002-2003*, ARMS CONTROL ASSOCIATION, <https://www.armscontrol.org/factsheets/iraqchron> (last updated July 2003).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> George W. Bush, President U.S., State of the Union Address in Washington, D.C. (Jan. 28, 2003) (transcript available at <http://whitehouse.georgewbush.org/news/2003/012803-SOTU.asp>).

<sup>53</sup> Kimball, *supra* note 47.

this briefing, the first allegation was made that not only was Iraq refusing to cooperate, it was actively concealing weapons of mass destruction.<sup>54</sup> Therefore, by the end of February, the U.S. was primed for war. The U.S. subsequently imposed a March 17, 2003 deadline for all disarmament activities, despite cautions from France, China, and Russia who remained suspicious that Iraq possessed weapons of mass destruction and urged that a military invasion should be a “last resort.”<sup>55</sup> Despite these warnings, by March 19, 2003, the U.S. had boots on the ground, and the invasion of Iraq commenced.<sup>56</sup>

Evidence of weapons of mass destruction in Iraq quickly deteriorated in light of day to be nothing more than a “smoking gun.”<sup>57</sup> By the beginning of May 2003, almost two months following U.S. invasion, the Bush Administration officially declared that no weapons of mass destruction were found in Iraq.<sup>58</sup> A Senate Intelligence Committee report in 2004 publicly confirmed that the suspicion of the presence and production of WMDs in Iraq was a “mischaracterization of the intelligence.”<sup>59</sup> In response, the national image, both at home and in the international community plummeted, leaving the proverbial egg fixed firmly to the face of the nation.

### *B. A Shifting Rhetoric: From Weapons to Women*

Therefore, the failure to discover WMDs and the rapidly declining approval of the U.S. led invasions left the U.S. scrambling to find a new rhetoric that would justify the military assault on Iraq and garner support both at home and abroad. The U.S. subsequently turned towards liberationist policies, such as gender mainstreaming through Resolution 1325, in order to implement the rhetoric of building a revitalized and democratic Iraq.<sup>60</sup> On an aircraft carrier dubbed the Abraham Lincoln, President Bush delivered an address, later titled the “Mission Accomplished” speech,<sup>61</sup> that reflects the shift to more liberationist rhetoric. He proclaimed that in the midst of “Operation Iraqi Freedom,” the U.S.

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<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> Shirley V. Scott & Olivia Ambler, *Does Legality Really Matter? Accounting for the Decline in US Foreign Policy Legitimacy Following the 2003 Invasion of Iraq*, 13 EUR. J. INT'L REL. 68, 70 (Mar. 2007).

<sup>58</sup> Kimball, *supra* note 47.

<sup>59</sup> Scott & Ambler, *supra* note 57.

<sup>60</sup> George W. Bush, President U.S., “Mission Accomplished” Speech to The Abraham Lincoln Carrier (May 1, 2003) (transcript available at <https://www.theguardian.com/world/2003/may/01/usa.iraq>).

<sup>61</sup> Seth Cline, *The Other Symbol of George W. Bush's Legacy*, U.S. NEWS & WORLD REPORT (May 1, 2003), <https://www.usnews.com/news/blogs/press-past/2013/05/01/the-other-symbol-of-george-w-bushs-legacy>.

fought for liberty and peace while freeing and rebuilding a nation.<sup>62</sup> President Bush proclaimed:

[W]e will stand with the new leaders of Iraq as they establish a government of, by, and for the Iraqi people. The transition from dictatorship to democracy will take time, but it is worth every effort. Our coalition will stay until our work is done. Then we will leave, and we will leave behind a free Iraq.<sup>63</sup>

The shift to rights-based rhetoric in order to justify U.S. action and restore the country's hero image is not a revolutionary tactic. U.S. legal historian Mary Dudziak writes that in the nation's past, domestic civil rights reform was used as a significant part of the Cold War due to heightened criticism of the U.S. in the international community.<sup>64</sup> As the U.S. took a firm stance against the spread of communism, rhetoric surrounding good versus evil and the triumph of freedom dominated the nation's promotion of global democracy.<sup>65</sup> However, international political powers criticized the fact that American democracy was touted as the ideal political scheme that made the achievement of social justice possible,<sup>66</sup> yet, domestic racial inequity and segregation persisted.<sup>67</sup> Such hypocrisy, in the eyes of the international community, severely hampered the insistence of American moral superiority.<sup>68</sup> Therefore, the U.S. responded with burgeoning federal promotion of social change domestically, as an attempt to improve the American image, both at home and abroad, and to garner support for the U.S. in the midst of the Cold War.<sup>69</sup>

Similarly in the case of Iraq, the U.S. faced intense domestic and international criticism after news emerged that the country invaded a foreign land without sufficient evidence or support showing the presence of WMDs.<sup>70</sup> According to international legal scholars Shirley Scott and Olivia Ambler, instead of being a show of national strength responding in the wake of the 9/11 terrorist attacks, the invasion subsequently became a symbol of rash decision-making, and deception by the Bush Administration.<sup>71</sup> Therefore, by adopting the

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<sup>62</sup> Bush, *supra* note 60.

<sup>63</sup> *Id.*

<sup>64</sup> MARY L. DUDZIAK, COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY 11–12 (2002).

<sup>65</sup> *Id.* at 12.

<sup>66</sup> *Id.* at 13.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 12.

<sup>69</sup> *Id.*

<sup>70</sup> Scott & Ambler, *supra* note 57, at 70.

<sup>71</sup> *Id.* at 70, 84; AL-ALI & PRATT, *supra* note 8, at 83.

rights-based rhetoric implemented via gender mainstreaming through Resolution 1325 to address the “plight” of the Iraqi women, Iraqi feminist scholar Nadjie Al-Ali posits that the U.S. once more used the rhetoric of supporting equal rights and justice in order to save face with the international community following global embarrassment and criticism.<sup>72</sup> Just as the U.S. turned to domestic rights-based rhetoric to combat international criticism and maintain support during the Cold War, history repeated itself as the U.S. turned once again to rights-based rhetoric to maintain political face during an unsupported invasion into a foreign land.

### III. THE ADOPTION AND FAILURE OF GENDER MAINSTREAMING VIA RESOLUTION 1325

According to Madeline Rees, the current Secretary General of the Women’s International League for Peace and Freedom, and international lawyer Christine Chinkin, “there is no U.N. Security Council Resolution more quoted, relied upon, or used as a rallying cry than U.N. Security Council Resolution 1325.”<sup>73</sup> The U.S., therefore, facially adopted the gender mainstreaming policies of Resolution 1325 in order to publicly advance political rhetoric reflecting a commitment to human dignity and women’s empowerment.<sup>74</sup>

However, realistic implementation of Resolution 1325’s mission statement to include women in post-conflict resolution and peacekeeping governance, fell far short of the mark.<sup>75</sup> Not only did the U.S. treat gender mainstreaming as a political afterthought when attempting to rebuild the Iraqi government, but attempts to fast-track Iraqi women into non-traditional gender roles ignored the disintegrating economic and environmental infrastructures barring Iraqi women from basic human resources, and painted Iraqi women as symbols of western

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<sup>72</sup> AL-ALI & PRATT, *supra* note 8, at 83.

<sup>73</sup> Madeleine Rees & Christine Chinkin, *Exposing the Gendered Myth of Post Conflict Transition: The Transformative Power of Economic and Social Rights*, 48 N.Y.U.J. INT’L L. & POL. 1211, 1215 (2016).

<sup>74</sup> Condoleezza Rice, U.S. Sec’y of State, Interview with The Washington Post editorial board in Washington, D.C. (Dec. 14, 2006) (transcript available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/12/15/AR2006121500529.html>).

<sup>75</sup> AL-ALI & PRATT, *supra* note 8, at 84.

occupation. Both actions left Iraqi women intensely more vulnerable to gender-based violence, and anti-occupation retaliation.

#### A. *Injecting Iraqi Women into Politics: An Apathetic Attempt*

Early attempts to implement Resolution 1325 and mainstream Iraqi women into positions of political and social power manifested in the creation of a National Action Plan (NAP).<sup>76</sup> A National Action Plan operates to “outline strategies, identify priority areas, assign roles, establish timelines, construct indicators, and determine a means of measurement and evaluation” in the execution of national policy or reform.<sup>77</sup> Under the supervision of U.N. appointed advisors, the Iraqi National Action Plan model closely mirrors that of the U.S. by addressing three broad initiatives: “(1) increasing the number of women in the police, military, judiciary and elected offices; (2) educating women and girls; (3) increasing women’s employability and job opportunities; and (4) perfecting laws that disadvantage women or drafting and implementing laws to promote women’s equality.”<sup>78</sup> However, according to a study performed by the European Peace Building Liaison Office, the implementation of a National Action Plan requires basic foundational supports to be marginally successful.<sup>79</sup> Most notably, there must be political will on the part of high ranking government officials, international peer pressure, and accountability.<sup>80</sup>

However, in Iraq, such a foundation was met with apathy and indifference. Following official military withdrawal from Iraq, the U.S. established the Coalition Provisional Authority (CPA) under the U.S. appointed head, Paul Bremer, in order to re-establish peace and political stability in post-invasion Iraq.<sup>81</sup> In July 2003, the CPA formed an advisory body comprised of a twenty-five member council representing a balance of different religious and ethnic sects within the Iraqi state.<sup>82</sup> The newly formed advisory committee, the Iraqi

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<sup>76</sup> Barbara Miller, Milad Pournik & Aisling Swaine, *Women in Peace and Security through United Nations Security Resolution 1325: Literature Review, Content Analysis of National Action Plans, and Implementation* 10 (Institute for Global and International Studies, Working Paper No. 13, 2014).

<sup>77</sup> *Id.*

<sup>78</sup> Dina Francesca Haynes, Naomi Cahn & Fionnuala Ni Aolain, *Women in the Post-Conflict Process: Reviewing the Impact of Recent U.N. Actions in Achieving Gender Centrality*, 11 SANTA CLARA J. INT’L L. 189, 203 (2012).

<sup>79</sup> Miller et al., *supra* note 76, at 16–17.

<sup>80</sup> *Id.* at 17.

<sup>81</sup> See generally L. Paul Bremer, James Dobbins & David Gompert, *Early Days in Iraq: Decisions of the CPA*, 50 GLOB. POL. & STRATEGY 21 (2008) (citing L. Paul Bremer as Presidential Envoy to Iraq and Administrator of the Coalition Provisional Authority).

<sup>82</sup> AL-ALI & PRATT, *supra* note 8, at 84.

Governing Council (IGC), was made up of twelve Shi'i, five Sunnis, five Kurds, one Turk-men, and one Christian.<sup>83</sup> With the use of ethnic and religious quotas to determine the composition of the IGC, Patricia Hewett, U.K. Secretary of State for Trade and Industry and Minister for Women, proposed the addition of a gender quota to channel Resolution 1325 and incorporate Iraqi women into the nation-building process.<sup>84</sup> Yet according to a former U.K. Minister of State, “[t]he U.S. was skeptical about it. They thought it was a nice idea, but it wasn’t a priority for them.”<sup>85</sup>

Illustrating this allegation, Lt. Col. Carl E. Mundy, who played a key role in managing post-conflict operations in southern Iraq, reported, “[w]e didn’t give special considerations to engaging the women [in the political process] . . . My concern was not stepping where I shouldn’t step, or dragging a woman in there that would anger the local men.”<sup>86</sup> Therefore, the U.S. dodged the issue of implementing Resolution 1325 and incorporating women into the rebuilding and peacemaking process out of deference for conservative Iraqi sensibilities. However, as Safia al-Souhail, a leader of the Bani Tamim tribe in central Iraq, remarked, “[t]hey’re forcing a lot of changes on this society. Why not force this as well? . . . Suddenly, women’s rights are the red line?”<sup>87</sup>

Thus, despite lobbying by the U.K. government, Iraqi women and the CPA women’s affairs officer, Judy Van Rest, the CPA only appointed three women to the IGC, with only one woman in the Cabinet of Ministers.<sup>88</sup> In addition to being fundamentally excluded from the IGC, there were no Iraqi women appointed to the twenty-four-member constitutional drafting committee that created the document that currently serves as Iraq’s interim constitution.<sup>89</sup> The failed prioritization of female representation in national peacebuilding and restructuring demonstrates a clear lack of political will, and the inconsequential impact of international peer pressure and accountability. While the U.S. adopted rhetoric that advocated an expansion of Iraqi women’s rights through political

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<sup>83</sup> *Id.* at 90.

<sup>84</sup> *Id.* at 91.

<sup>85</sup> *Id.* at 90.

<sup>86</sup> Swanee Hunt & Cristina Posa, *Iraq’s Excluded Women*, FOREIGN POLICY (OCT. 27, 2009, 4:07 PM), <http://foreignpolicy.com/2009/10/27/iraqs-excluded-women>; Lasky, *supra* note 2, at 11.

<sup>87</sup> *Id.*; Lasky, *supra* note 2, at 11.

<sup>88</sup> Hunt & Posa, *supra* note 86; AL-ALI & PRATT, *supra* note 8, at 91.

<sup>89</sup> Hunt & Posa, *supra* note 86.

affirmative action, the lack of effort dedicated to implementing such policies resulted in nothing more than stagnation for Iraqi women.

*B. Rapidly Deteriorating Living Conditions: Water, Electricity, Health Care and Unemployment*

Combined with a lack of effort dedicated to incorporating women into the peacebuilding process, gender mainstreaming via Resolution 1325 also failed to address the disintegration of the Iraqi state infrastructure caused by invasion and sanctions that ravaged the country of vital resources necessary to support the health and wellbeing of Iraqi women and their families.<sup>90</sup> Due to insufficient clean water and sanitation, few adequate health care services, irregular electricity, and plummeting employment options in the current economic crisis, sickness, starvation, poverty, and skyrocketing mortality rates became a living reality post-invasion.<sup>91</sup>

Before the invasion, approximately 12.9 million Iraqis had access to safe drinking water.<sup>92</sup> However, only three years following U.S. boots on the ground, only 9.7 million had access to this basic right.<sup>93</sup> As one Baghdadi doctor, Intisar K., commented: “There is not enough clean drinking water. Lack of sanitation is a big problem and continues to be one of the main causes of malnutrition, dysentery and death amongst young children.”<sup>94</sup> In 2004, local surveys reported that the rates of acute malnutrition among young Iraqi children nearly doubled since the invasion of the country, leaving roughly 400,000 children suffering from “wasting,” an illness manifested by chronic diarrhea and dangerous protein deficiencies.<sup>95</sup>

In the health care sector, infant and mother mortality rates skyrocketed with significantly diminished intervention by U.S. Forces.<sup>96</sup> Although the 2003 World Bank and United Nations Development Programme (UNDP) joint assessment report detailed the desperate need to rebuild the Iraqi healthcare system, the U.S. allocated less than \$1 billion of funding to the health care sector.<sup>97</sup> Progress is reportedly particularly slow in rebuilding primary health

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<sup>90</sup> Lasky, *supra* note 2, at 10.

<sup>91</sup> *Id.* at 1–2.

<sup>92</sup> AL-ALI & PRATT, *supra* note 8, at 72.

<sup>93</sup> *Id.*

<sup>94</sup> Nadjie Al-Ali & Nicola Pratt, *Women in Iraq: Beyond the Rhetoric*, 239 MIDDLE EAST REP. 18–23 (June 2006).

<sup>95</sup> Lasky, *supra* note 2, at 10.

<sup>96</sup> Al-Ali, *supra* note 13, at 746.

<sup>97</sup> AL-ALI & PRATT, *supra* note 8, at 72.

care centers which are crucial for women in rural communities.<sup>98</sup> Therefore, as of 2007, only fifteen of the 142 health centers promised by the U.S. Agency for International Development (USAID) were built, and those structures left standing were ravaged by looters as U.S. soldiers looked on.<sup>99</sup> Salwa H. a medical doctor in Iraq<sup>100</sup> recalled:

I saw soldiers laughing and encouraging a group of young men who looted a hospital. They were just standing there and grinning, making jokes about Ali Baba. It was so humiliating. I shouted at the soldiers asking them to help. I told them that under international law they must keep things under control. They said they were under orders not to intervene. I was so angry and cried when I saw thieves going off with hospital beds. That afternoon, two U.S. soldiers could have easily prevented this happening. But they did not care. They only protected the Ministry of Oil and the Ministry of the Interior.<sup>101</sup>

In addition to poor sanitation and lack of adequate health care services, insufficient access to electricity left Iraqi women vulnerable to both poverty and gender-based violence. In Iraqi Kurdistan in 2007, the topic of conversation among women in the local community was not invasion, but electricity.<sup>102</sup> At the time, Iraqi-Kurdish women in this area could expect electricity in their homes for only four to five hours per day,<sup>103</sup> whereas pre-war, the average Iraqi citizen had sixteen to twenty-four hours of electricity per day.<sup>104</sup> One woman in the community, Jamelia, complained that she no longer could leave the house in the evening because the streets were so dark and she feared for her safety.<sup>105</sup>

The lack of electricity also impacted women in the employment sector.<sup>106</sup> According to an interview with Um Mustafa, a hairdresser working in Baghdad in 2005: “[t]here is no electricity, no water, the heat is killing us. Customers, when they peer in, see only darkness. They shy away, and this is where we are supposed to make a living. And what’s the quintessential thing for a hairdresser? Electricity.”<sup>107</sup> Insufficient electricity not only made it impossible for women to continue working in multiple public occupations, but also prohibited older,

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<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 78.

<sup>100</sup> Her location is not provided to protect the anonymity of the source.

<sup>101</sup> AL-ALI & PRATT, *supra* note 8, at 78.

<sup>102</sup> *Id.* at 71.

<sup>103</sup> Lasky, *supra* note 2, at 10.

<sup>104</sup> *Id.*

<sup>105</sup> AL-ALI & PRATT, *supra* note 8, at 72.

<sup>106</sup> Lasky, *supra* note 2, at 9.

<sup>107</sup> *One Day in Iraq: Daily Lives*, BBC NEWS (June 7, 2005, 7:14 PM), [http://news.bbc.co.uk/2/hi/middle\\_east/4613785.stm](http://news.bbc.co.uk/2/hi/middle_east/4613785.stm).

educated women from running small businesses out of their homes that began as a way to earn income during pre-war economic sanctions.<sup>108</sup>

Therefore, the fallout following the final invasion of the U.S. into the region left Iraqi women in positions of abject poverty, without stable sources of income or education.<sup>109</sup> For women in the new low-income classes in urban areas or poor women living in the countryside, education and employment gave way to simply seeking means for survival.<sup>110</sup> Women in communities such as Iraq, Amman and Damascus began turning to alternative fields of employment to make enough money to survive: women turned to sex work, female doctors turned to hairdressing, engineers turned to working in laundromats.<sup>111</sup> The Iraqi military alone employed nearly 430,000 individuals, however, following the dismantling of the Ba'ath regime and the dissolution of the military, both male and female employees found themselves unemployed and fighting for survival.<sup>112</sup>

Widespread employment, coupled with skyrocketing inflation and poverty, required families to dismantle the structures that provided for women's advancement in the Iraqi economy.<sup>113</sup> For example, children were taken out of schools and put to work to earn a meager additional income, and young girls were married at earlier ages to lessen financial burdens upon their families.<sup>114</sup> Therefore, with unemployment, sky-high inflation, and a virtual collapse of the economy, the mobile, educated, and employed middle class women of the pre-invasion Ba'athist regime have all but disappeared from Iraqi society.<sup>115</sup>

### *C. From Disorganized Violence to Organized Targeting: Gender Mobility, Security and Retaliation*

Gender mainstreaming policies via Resolution 1325 failed to address not only the social vulnerabilities of Iraqi women detailed above, but, initially, also the lack of a properly functioning police force<sup>116</sup> in the destabilized state resulted in what criminal law scholars Penny Green and Tony Ward characterize as “a

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<sup>108</sup> Lasky, *supra* note 2, at 9.

<sup>109</sup> Al-Ali, *supra* note 13, at 747.

<sup>110</sup> AL-ALI & PRATT, *supra* note 8, at 73.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 74.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.* at 78.

chaos of opportunistic rape, kidnapping, woman-trafficking and sexual abuse.”<sup>117</sup>

In 2003, Human Rights Watch reported that Iraqi gangs were beginning to form mafia-like organizations, populating the streets of Baghdad and other urban areas of Iraq.<sup>118</sup> In response to the absence of a functioning police force and increased rates of gendered violence, Iraqi academic and feminist scholar Nicola Pratt asked a U.S. official about the absence and the responsibility of the U.S. to intervene.<sup>119</sup> She was informed that “Iraqi families dealt with violence against women in their own way—by keeping their women at home. . . . Anyway, I don’t think women were more targeted than any other group within Iraq.”<sup>120</sup>

Yet in spite of U.S. assertions, Iraqi police testified that women and girls were not only victims of ongoing gang violence, but also unique target of such gangs who specialized in kidnapping young girls and selling them into sexual slavery in the Gulf countries.<sup>121</sup> According to international women’s human rights scholar Lisa Davis, the 2003 U.S. invasion of Iraq created a lucrative environment for sex and labor trafficking due to ongoing instability, as well as with a renewed internal displacement of vulnerable minorities.<sup>122</sup> While Iraq passed comprehensive anti-trafficking legislation in April 2012 to protect victims and prosecute offenders, weak governance and a lack of enforcement has “nevertheless helped to further entrench Iraq as a regional trafficking hub.”<sup>123</sup>

However, seemingly random and opportunistic violence against Iraqi women and girls in the absence of a local peacekeeping authority did not occur in a vacuum.<sup>124</sup> Davis asserts that conflicts such as the U.S. invasion of Iraq have not only increased the vulnerability of thousands to gender-based violence, but “further entrenched structural and cultural violence against women . . . .”<sup>125</sup> Therefore, gender-based targeting of Iraqi women occurs as part of a continuum that reveals patterns of violence that appear arbitrary, but serves clear cultural

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<sup>117</sup> Penny Green & Tony Ward, *The Transformation of Violence in Iraq*, 49 BRIT. J. CRIMINOLOGY 609, 612 (2009).

<sup>118</sup> Lasky, *supra* note 2.; AL-ALI & PRATT, *supra* note 8, at 78.

<sup>119</sup> AL-ALI & PRATT, *supra* note 8, at 78.

<sup>120</sup> *Id.* at 79.

<sup>121</sup> *Id.*

<sup>122</sup> Lisa Davis, *Iraqi Women Confronting ISIL: Protecting Women’s Rights in the Context of Conflict*, 22 SW. J. INT’L L. 27, 47 (2016).

<sup>123</sup> *Id.*

<sup>124</sup> *Windows of Opportunity: The Pursuit of Gender Equality in Post-War Iraq*, *supra* note 3, at 7.

<sup>125</sup> Davis, *supra* note 122, at 29.

and political purposes.<sup>126</sup> While gender mainstreaming failed to account for the structural, economic, and environmental factors that perpetuated gendered vulnerability, its push to westernize and modernize Iraqi women also cast them as symbolic markers of foreign occupation<sup>127</sup> and targets for culture-based gendered retaliation.

Gendered, retaliatory targeting as a by-product of U.S. gender mainstreaming policies came to the forefront of international consciousness between 2004 and 2008; when honor killings in Basra, Iraq rose seventy percent from pre-invasion numbers.<sup>128</sup> According to the Basra Security Committee, in 2007 alone, 79 women were killed by vigilantes for violating Islamic teachings, 44 died as a result of honor killings, and seven others were killed for varying political agendas.<sup>129</sup> The United Nations Assistance Mission in Iraq (UNAMI) also received reports of “scores of so-called ‘honor crimes’ being perpetrated regularly in Basra by armed groups or militia.”<sup>130</sup> According to Basra police records, the forty-four women murdered in “honor killings” had multiple gunshot wounds, several of which were inflicted execution-style with a single shot to head.<sup>131</sup> Similarly to Dr. Zeena Al- Qushtaini, whose story was related at the beginning of this Comment, most victims were found on streets or isolated rural areas by police or members of the public with notes “accusing them of adultery or of ‘un-Islamic’ conduct, such as failure to follow certain dress codes or to veil appropriately.”<sup>132</sup>

Consequently, Iraqi women as symbols of foreign occupation and westernization were targeted as a means to demarcate boundaries between the “native citizenry” and the “foreign occupiers.” Iraqi feminist scholar Nadjie Al-Ali proposed that retaliatory violence against women who challenged the cultural status quo symbolizes not only a visible repudiation of Western modes of conduct and dress, but an excessive act of excising Western influence from Iraqi culture.<sup>133</sup>

Summarizing the above, implementing Resolution 1325 in post-conflict Iraq to achieve gendered equality and justice had an opposite and inherently devastating effect on the lives and safety of Iraqi women. Combined with the

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<sup>126</sup> Green & Ward, *supra* note 117, at 612.

<sup>127</sup> AL-ALI & PRATT, *supra* note 8, at 80.

<sup>128</sup> Davis, *supra* note 122, at 42.

<sup>129</sup> Green & Ward, *supra* note 117, at 615.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* at 616.

apathy directed towards implementation, gender mainstreaming left women more vulnerable and susceptible to violence because (1) gender mainstreaming did nothing to resolve the crumbling infrastructure that left women without electricity, clean water, health care, or employment, (2) as a result of the crumbling infrastructure, the lack of a peacekeeping police force left women more vulnerable to kidnapping and sex trafficking, and (3) the push to mainstream women into positions that were in direct conflict with traditional gender roles painted Iraqi women as symbols of U.S. occupation and therefore targets of retaliation.

However, gender mainstreaming through policies such as Resolution 1325 is not the only method through which gendered equality can be constructed or restored in post-conflict areas. This Comment argues that Vulnerability Theory better supports policies that would help vulnerable women without exposing them to gender-based violence. Instead of targeting women as a population defined by their gender and attempting to restore human rights and gendered justice through goals of equality, Vulnerability Theory addresses how social, political, economic, and environmental factors interact with gender to leave populations of individuals disproportionately vulnerable.<sup>134</sup> Therefore, by addressing how women are embedded within factors that exacerbate vulnerability rather than treating women as a discrete and discriminated group on the basis of gender alone, Vulnerability Theory is a more viable policy for post-conflict, rights-based justice and resolution. To argue in support of Vulnerability Theory, however, this Comment must first provide a theoretical overview.

#### IV. VULNERABILITY THEORY REPLACING LIBERAL GENDER MAINSTREAMING

##### A. *Overview of Vulnerability Theory*

First advanced by feminist legal scholar Martha Fineman in the *Yale Journal of Law and Feminism* in 2008,<sup>135</sup> Vulnerability Theory posits that all human beings are vulnerable and prone to dependency; therefore, the state has an obligation to ameliorate that vulnerability.<sup>136</sup> Implicit in this theory is the assertion that “it is neither just nor reasonable to expect that mere equal

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<sup>134</sup> Nina A. Kohn, *Vulnerability Theory and the Role of Government*, 26 *YALE J.L. & FEMINISM* 1, 5 (2014).

<sup>135</sup> Martha A. Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 *YALE J.L. & FEMINISM* 1, 1 (2008).

<sup>136</sup> Kohn, *supra* note 134, at 5.

treatment will meet individuals' needs in a world in which no one is assured of avoiding injury, illness, or other adverse life events."<sup>137</sup>

Fineman developed the Vulnerability Theory as a critique of theories of social justice and responsibility that focus on achieving formal equality through sameness of treatment.<sup>138</sup> Fineman rejects formal equality approaches such as gender mainstreaming policies, because such approaches focus on eliminating discrimination against historically disadvantaged groups rather than eliminating the institutional and structural systems of inequity that create ongoing discrimination.<sup>139</sup> In essence, the gender mainstreaming model is equivalent to attempting to eradicate weeds by pulling off the leaves, instead of pulling out the roots. The leaves wither and die for a time, but the roots remain very much still alive. Therefore, Fineman warns that by treating the symptom rather than the cause of persistent inequity, formal equality approaches such as Resolution 1325 only serve to further systems of discrimination by facilitating existing inequalities within a society.<sup>140</sup>

Vulnerability Theory also advances substantive equality in ways that identity-based approaches through formal equality theories cannot. Fineman's theory of vulnerability rejects formal equality theory because such approaches oversimplify identity groups into simplistic categories such as race or gender.<sup>141</sup> Specifically, Fineman argues that the creation of legal structures that are sensitive to differing circumstances and positions, as well as to how differing institutions impact and perpetuate discrimination, cannot be achieved through focus on "multiplicities of identities, but . . . in exactly the opposite direction: away from the fragmentation of the legal subject to the creation of a vigorous universal conception."<sup>142</sup> In order to illustrate Vulnerability Theory's rejections

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<sup>137</sup> *Id.*

<sup>138</sup> *Id.* at 6.

<sup>139</sup> *Id.*

<sup>140</sup> Martha Albertson Fineman, *Beyond Identities: The Limits of an Antidiscrimination Approach to Equality*, 92 B.U. L. REV. 1713, 1738 (2012) [hereinafter *Beyond Identities*].

<sup>141</sup> Martha Albertson Fineman, *Feminism, Masculinities, and Multiple Identities*, 13 NEV. L.J. 101, 123 (2013) [hereinafter *Feminism, Masculinities, and Multiple Identities*].

<sup>142</sup> *Id.* at 119; *see also* Kohn, *supra* note 134, at 13. Kohn argues that Vulnerability Theory is not equipped with the power essential to suggest particular social welfare laws and policies. *Id.* Kohn states that although broad social policies that provide all individuals with an equitable standard of living and opportunities are desirable in current political climates, such policies are almost always both over- and under-inclusive. *Id.* Therefore, Vulnerability Theory does not include how to prioritize among vulnerable and discriminated groups when attempting to allocate social power, resources, and political capital. *Id.* However, a policymaker seeking to ameliorate discrimination would wish to allocate resources to vulnerable populations and would default to determining who would need resources more than another. Yet this use of Vulnerability Theory is contrary to Fineman's approach, who argues that vulnerability is universal and should not be confined to group identities. Thus, allocating resources based on a person's level of vulnerability does not move beyond their identity.

of gender mainstreaming attempts at justice, this Comment will apply two base aspects of Vulnerability Theory: (A) the Restrained v. the Responsive State and (B) the Embedded v. the Embodied Legal Subject.

*B. The Restrained v. The Responsive State*

An essential aspect of Vulnerability Theory is the rejection of the “Restrained State“ in favor of what Martha Fineman labels, “the Responsive State.”<sup>143</sup> In contrast to the Responsive State, the Restrained State avoids assuming responsibility for inequalities and unwarranted privileges because its position as the ultimate societal authority is ideologically contained.<sup>144</sup> This constraint is created when individuals, institutions, and the state itself are viewed as isolated and separated from one another, rather than conceptualized in a state of interdependence.<sup>145</sup> By viewing these entities in isolation, this perspective limits the ability of the state to regulate, modify and structure institutions in ways that more effectively respond to vulnerability.<sup>146</sup>

In contrast, the Responsive State accepts responsibility for its operation and the societal institutions that it has helped bring into existence, and therefore views individuals and institutions as intertwined, symbiotic, and interdependent.<sup>147</sup> The Responsive State, under Vulnerability Theory, subsequently responds to the needs of its population “by creating legal institutions and systems that increase resilience across populations.”<sup>148</sup> For example, rather than creating a new category of crime for those who commit fraud against the elderly, Vulnerability Theory would address the deeper sources of discrimination against the elderly that would leave them vulnerable to fraudulent scams, such as “social isolation, limited financial literacy, under-regulation of commercial activities, under-enforcement of existing regulations on commercial activities, and lack of access to legal resources for victims of fraud.”<sup>149</sup> By targeting financial, social, and political factors that disproportionately impact a group and leave them vulnerable, Vulnerability Theory imagines that society is integrated, rather than comprised of separate spheres and competing individual identities or groups that structure political and

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However, Vulnerability Theory does have prescriptive value as a helpful framework for considering social structures and how to allocate responsibilities within the state.

<sup>143</sup> *Beyond Identities*, *supra* note 140, at 1760.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> Kohn, *supra* note 134, at 13.

<sup>149</sup> *Id.*

institutional practices.<sup>150</sup> Therefore, this theory treats equality as a form of justice anchored in the human condition, rather than in an unachievable ideal of universal equality.<sup>151</sup>

### C. *The Embodied v. The Embedded Legal Subject*

By turning towards the examination of justice grounded in unique human experiences of vulnerability, Vulnerability Theory asserts that any measures that are designed to achieve justice by simply applying the law to all individuals equally will not be effective. Such an approach treats vulnerable groups as embodied legal subjects.<sup>152</sup> In the embodied subject, differences are viewed as the result of politically significant social relations and conventions based on created categories such as gender and race.<sup>153</sup> However, Vulnerability Theory seeks to look past treating instances of discrimination within isolated and discrete identities such as gender to examine the *embedded* legal subject.<sup>154</sup> The embedded legal subject is therefore not one whose identity and subsequent discrimination is categorized, but instead one that is firmly rooted in society and its institutions, and the subject's experiences are woven distinctly into a web of economic, cultural, political, and social relationships.<sup>155</sup> These relationships structure options, and create or impede opportunities depending on the individual's relationship to the institution, not on the individual subject's category in the institution.<sup>156</sup>

### D. *The Necessity of the Responsive State and Embedded Subject in Post-Conflict Resolution*

In the context of post-conflict resolution, the Restrained State's methods of viewing groups and institutions as embodied and isolated rather than embedded and interacting are counter-productive to the amelioration of social, political, and economic injustices suffered by vulnerable groups. Consequently, according

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<sup>150</sup> *Beyond Identities*, *supra* note 140, at 1755–56. Therefore, how institutions respond to collective vulnerability should form the basis on which they are judged and incorporated into social rebuilding and remaking. Instead, Vulnerability Theory brings “individuals into families, families into communities, and communities into societies, nation states and international organizations.” *Id.* at 1756. Hence, individuals influence relationships and institutions, relationships in turn influence individuals and institutions, and institutions therefore influence individuals and relationships.

<sup>151</sup> *Id.* at 1752.

<sup>152</sup> *Id.* at 1753.

<sup>153</sup> Martha Albertson Fineman, *Equality and Difference – The Restrained State*, 66 ALA. L. REV. 100, 110 (2015) [hereinafter *Equality and Difference*].

<sup>154</sup> *Feminism, Masculinities, and Multiple Identities*, *supra* note 141, at 121.

<sup>155</sup> *Equality and Difference*, *supra* note 153, at 113.

<sup>156</sup> *Id.*

to urban studies legal scholar Yosef Jabareen, viewing institutions as interrelated rather than independent is essential for post-conflict reconstruction.<sup>157</sup> This perspective should include a holistic approach, taking into account the interrelated nature of four essential components: political reconstruction, economic reconstruction, social reconstruction, and provisions for general security.<sup>158</sup>

Political reconstruction results in small-scale capacity building, which aims to strengthen local government so it may support and promote broader political policies.<sup>159</sup> Economic reconstruction subsequently results in promoting a self-sustaining economy that has the capacity to restore vital urban infrastructure, including access to basic human needs such as clean water, sanitation, and health services.<sup>160</sup> By promoting social reconstruction, nations are rebuilding essential infrastructure that can support and encourage collective decision-making to ultimately contribute to enhancing community welfare.<sup>161</sup> Finally, security is a critical precondition for large scale reconstruction of a safe and well-functioning national infrastructure.<sup>162</sup>

Layered on top of the Responsive State's need to view these institutions as interrelated in post-conflict resolution is the need for the state to examine how vulnerable communities such as women are embedded in, and made more vulnerable, by the impact of conflict upon these institutions. For example, according to gender and women's rights scholars Elaine Zuckerman and Marcia Greenberg, examining how post-conflict child-care and familial responsibilities prevent women from leaving the home could better inform the measures taken to ensure women can participate in education and employment training opportunities following an armed conflict.<sup>163</sup> In turn, generating employment serves as a top priority for constructing a sustainable post-conflict economy,

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<sup>157</sup> Yosef Jabareen, *Conceptualizing "Post-Conflict Reconstruction" and "Ongoing Conflict Reconstruction" of Failed States*, 26 INT'L J. POL., CULTURE, & SOC'Y. 107, 119–20 (2013).

<sup>158</sup> *Id.*

<sup>159</sup> *Id.* at 119.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.* at 120.

<sup>162</sup> *Id.*

<sup>163</sup> Elaine Zuckerman & Marcia Greenberg, *The Gender Dimensions of Post-Conflict Reconstruction: An Analytical Framework for Policymakers*, 12 GENDER & DEV. 70, 77 (2004).

which is essential because “high unemployment may trigger renewed conflict.”<sup>164</sup>

Additionally, examining how resources, like water supply and sanitation, are basic needs for humanity and survival reveals how the lack of such resources disproportionately impact women in conflict-damaged countries.<sup>165</sup> Besides putting women and girls at risk of severe health crises, lack of clean water also requires women to travel over long distances to seek such resources, stealing valuable time from education and employment.<sup>166</sup> Therefore, by being sensitive not only to the interconnected nature of infrastructural institutions, but also to how conflict ravages these institutions, the Responsive State highlights and addresses how these conditions leave groups such as women disproportionately more vulnerable to discrimination and violence.<sup>167</sup>

#### CONCLUSION: SHIFTING FROM GENDER MAINSTREAMING TO VULNERABILITY THEORY IN POST-CONFLICT IRAQ

To conclude, gender mainstreaming was an inappropriately applied attempt to achieve gendered justice for Iraqi women that ultimately resulted in rendering them extraordinarily more susceptible to perpetuating vulnerability and gender-based violence. As demonstrated by the creation of the Iraqi National Action Plan, the U.S. effort to ameliorate and achieve gendered justice casts Iraqi women as embodied legal subjects made vulnerable exclusively due to their gender. Therefore, the apathetically applied NAP sought to achieve equality by “add[ing] women and stir[ring]” them in to positions of power and autonomy<sup>168</sup> without taking into account other social, political or economic factors contributing and perpetuating post-conflict vulnerability.<sup>169</sup> By doing so, political gender mainstreaming not only failed to reach successful implementation, but the aims and strategies of such mainstreaming resulted in making Iraqi women extraordinarily more vulnerable two-fold: gender mainstreaming both overlooked the necessity expressed in Vulnerability Theory to address how destabilized social, political and economic infrastructures interact and contribute to vulnerability, and how westernizing and modernizing

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<sup>164</sup> *Id.*

<sup>165</sup> *Id.* at 78.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.* at 79.

<sup>168</sup> Barrow, *supra* note 35, at 60.

<sup>169</sup> Zeynep N. Kaya, *Women, Peace and Security in Iraq*, LSE MIDDLE EAST CENTRE REPORT (Aug. 2016), <http://eprints.lse.ac.uk/67347/1/WPSIraq.pdf>.

rhetoric surrounding Iraqi women made them targets for both disorganized violence and organized, symbolic retaliation against occupation.

As demonstrated by Yosef Jabareen's four components of post-conflict reconstruction, gender mainstreaming as a policy of the Restrained State in Iraq was not viable as a means of achieving gendered justice because it attempted to address manifesting symptoms of discrimination, rather than examining how infrastructural crises perpetuated and exacerbated a woman's vulnerability to discrimination and violence. Therefore, conditions such as lack of electricity, clean drinking water, health care services, employment opportunities, and local safety for Iraqi women were never examined as contributing causes of gendered vulnerability. Such conditions left Iraqi women disproportionately susceptible to abject poverty, unemployment, disease, and death.

Additionally, by simply attempting to achieve gendered justice by injecting women into social, political, and economic positions of power, the U.S. failed to acknowledge how subverting traditional gender roles during a period of occupation would make many Iraqi women targets for organized, retaliatory violence against "westernization." As demonstrated by the brutal honor-based killings of scores of women in Basra, Iraq, attempts to ameliorate existing vulnerabilities of Iraqi women only resulted in further exposing them to gender-based violence.

Therefore, gender mainstreaming in the context of post-conflict Iraq is the very antithesis of the U.S. intent to achieve gendered justice. Instead, Vulnerability Theory provides an alternative method to achieving gendered justice by providing necessary social, political, and economic support for Iraqi women without exposing them to gender-based violence. The weakness inherent in gender mainstreaming is its top-down approach: gender mainstreaming in the restrictive state casts women as embodied subjects made vulnerable by their gender, thereby attempting to "solve" discrimination through efforts directed towards achieving gender equality. Conversely, Vulnerability Theory begins with a bottom-up approach: the Responsive State sees disproportionate discrimination experienced by women but works to address the root causes of such discrimination, understanding that factors such as poverty, diminished access to life-saving resources, unemployment, and violence all intersect with gender to perpetuate conditions of vulnerability.

Thus, in order to enact meaningful and lasting gendered justice in post-conflict Iraq, the U.S. must turn its focus away from gender mainstreaming and towards the structural support and rebuilding policies of Vulnerability Theory so that further attempts to achieve justice for Iraqi women do not result in placing

a Band-Aid® on surface level discrimination while inflicting deeper, more deadly wounds to their rights and dignities.

#### EPILOGUE

This Comment would be remiss not to acknowledge that proposing Vulnerability Theory in order to combat the gender mainstreaming policies of Resolution 1325 would be moot in the current political condition of Iraq under the control of militants united under the newly proclaimed Islamic State of Iraq and Syria (ISIS). Although U.S. forces worked to implement Resolution 1325 in the Iraqi state, execution of the Resolution halted with the invasion of Northern Iraq by ISIS beginning in June 2014.<sup>170</sup> According to Lisa Davis, ISIS invaded Iraq via the exploitation of pre-existing political, economic, and social destabilization, and during such times of conflict, women, girls, and other marginalized persons are at greater risk of gender-specific harms, as “pre-existing impunity and social stigma surrounding gender-based violence worsens armed conflict’s impacts.”<sup>171</sup> Iraqi women experienced horrific honor-based violence at the hands of ISIS militants including “execution, dismemberment, rape, sexual slavery, and flogging.”<sup>172</sup>

However, hope seemingly dawned for Iraqi women in February 2018, as Iraq declared victory over ISIS after more than three years of grueling combat against the extremists fought with close U.S. support.<sup>173</sup> Initially, the U.S. military intervention against ISIS was “described as ‘limited,’ but as Iraq’s military struggled to roll back the extremists, the U.S.-led coalition’s footprint in the country steadily grew.”<sup>174</sup> Consequently, according to coalition spokesman Army Colonel Ryan Dillon, while the U.S.-led coalition and the Iraqi government have agreed to reduce the number of U.S. troops in Iraq, “[c]ontinued coalition presence in Iraq will be conditions-based, proportional to the need and in coordination with the government of Iraq.”<sup>175</sup>

Therefore, as international relations, security studies, and American foreign policy historian Andrew Bacevich warns, the hope that “the ongoing enterprise

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<sup>170</sup> Yifat Susskind & Yanar Mohammed, *Why True Legal Victories for Human Rights Depend on Grassroots Activists*, 48 N.Y.U. J. INT’L L. & POL. 1199, 1202 (2016).

<sup>171</sup> Davis *supra* note 122, at 31.

<sup>172</sup> *Id.* at 28.

<sup>173</sup> Susannah George & Qassim Abdul-Zahra, *U.S. Starts Iraq Drawdown After Declaration of Victory Over ISIS*, USA TODAY (Feb. 5, 2018, 3:31 AM), <https://www.usatoday.com/story/news/world/2018/02/05/u-s-iraq-isis/306221002/>.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

may someday end—that U.S. troops will finally depart—appears so unlikely as to make the prospect unworthy of discussion. Like the war on drugs or the war on poverty, the War for the Greater Middle East has become a permanent fixture in American life and is accepted as such.”<sup>176</sup> Although damaging gender mainstreaming attempts at gendered justice were derailed by the invasion of ISIS forces in 2014, the U.S. remains a fixed presence in Iraq and in the greater Middle East. As such, the U.S. is primed and capable to ultimately hurt or help vulnerable communities ravaged by war.

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<sup>176</sup> ANDREW J. BACEVICH, AMERICA’S WAR FOR THE GREATER MIDDLE EAST: A MILITARY HISTORY 368 (2016).

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