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Noah Feldman: What We Owe Iraq

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Introduction

LATE ONE NIGHT IN MAY 2003, I WAS IN A MILITARY transport plane somewhere over the Mediterranean, on my way to a stint as constitutional adviser to the American occupation authorities in Iraq. In the dozen or so rows of seats that had been jerry-rigged in the open belly of the aircraft, most of the passengers—all in various aspects of the advising business—were dozing, shivering slightly for the last time before we hit the Baghdad heat. The adrenaline pumping through me, I was rereading the best modern book on the Iraqi Shi'a¹ and hastily trying to teach myself some Iraqi colloquial dialect.

Pausing to take in the moment, I glanced around at my new colleagues. Those who were awake were reading intently. When I saw what they were reading, though, a chill crept over me, too. Not one seemed to need a refresher on Iraq or the Gulf region. Without exception, they were reading new books on the American occupation and reconstruction of Germany and Japan.

My initial shock at my colleagues' reading matter was almost purely situational. Although it is possible to draw some more than superficial analogies between Ba'athism and National Socialism,² Iraq was nothing like postwar Germany and Japan. Economic, political, social, and cultural conditions in Iraq after the U.S. invasion were distinct from any occupation situation that anyone had ever encountered, and if there was to be any hope of handling the situation effectively, the first step was surely to immerse oneself in what information was available about the country. The task felt classically orientalist, in the sense of gathering knowledge in order to exert

control; but what other choice was there? Once you had agreed to go to Iraq as part of the occupation, you could go ignorant, or you could try to learn as much as possible.

But there was another, deeper problem with thinking of Iraq in terms borrowed from the nation-building experiences of the post-World War II era. We were occupying Iraq for reasons very different from those underlying our occupations of Germany and Japan. The most obvious difference was that the Axis powers had attacked us, and that we had then, with no other choice, fought and defeated them in a world war of unprecedented horror. By contrast, our war in Iraq, framed though it might have been in terms of preemptive self-protection, had been essentially voluntary. More to the point, however, the *purposes* of our occupation and reconstruction efforts in the second half of the 1940s were fundamentally different from the purposes of the task we were poised to undertake in Iraq. Different strategic objectives call for different tactics; but that is not all. The different purposes of contemporary nation building also call for a new and different ethical approach, one grounded in a normative evaluation of what we set out to achieve, the means and attitudes we adopt in the process, and a realistic sense of what success or failure would look like. We need, in short, an ethics of nation building suitable to our circumstances.

The place to begin the enquiry after such an ethics is with a clear-eyed, honest assessment of the purposes of nation building today, whether in Iraq or elsewhere—and that is the topic of the first chapter, in which I offer an explanation of how nation building can serve the nation builder's security interests, and how failed or incomplete nation building can harm them. In brief, I argue that strong countries like the United States and the Western European powers have an interest in building nation-states that seem reasonably legitimate to their citizens, because failed states and those perceived as illegitimately imposed from outside are likely to generate

terror. I then defend self-protective nation building from the ethical challenge that its motives doom it to immorality.

The second chapter confronts the legacy of paternalism that, inherited from the ideology of empire, pervades the theory and practice of nation building today. I propose that nation building can be salvaged ethically only if it is stripped down to the modest proposition that the nation builder exercises temporary political authority as trustee on behalf of the people being governed, in much the same way that an elected government does. The fact that nation builders do not stand for election means they must authorize alternative means for the people whom they are governing to monitor their performance: free speech, assembly, and the active participation in government of the citizens of the country being ruled from the outside.

In the third and final chapter I consider how elections ought to figure in the nation-building process. Too much has been made of the capacity of elections to reflect the general will, and too little of their value in revealing voters' leadership preferences and in checking the arbitrary exercise of power. I propose that elections must be understood as the midpoint of the nation-building undertaking, not the end of the nation builder's obligations toward the country in question. In particular, I argue that the nation builder must not compromise its duty to provide security so as to facilitate political negotiation among the people who must shape the future for themselves—despite the likelihood that the nation builder will be sorely tempted to cut and run.

In each chapter, I draw examples from the U.S.-led occupation of Iraq in 2003–4, a distinctive moment that poses the ethical dilemmas of nation building more starkly than do the post-Cold War nation-building projects undertaken by UN-authorized transitional administrations in Somalia, Bosnia, Kosovo, East Timor, and Afghanistan. From May 2003, when it was formally organized to re-

place the short-lived Office of Reconstruction and Humanitarian Assistance, the Coalition Provisional Authority (CPA) operated for more than a year in Iraq as an occupation government before transforming itself on June 28, 2004, into a U.S. embassy with extraordinary advisory capacities. During this period, the civilian administrator, L. Paul Bremer III, reported to the president of the United States through the secretary of defense. Although the United Kingdom participated in the CPA, sending a series of special representatives who in principle ranked alongside Bremer, and although other Coalition participants like Australia and Italy took roles in the CPA as well, the CPA functioned largely as an American show with British input.

In the context of UN-approved nation building, serious problems of conflict of interest, paternalism, and self-determination are sometimes shrugged off with a gesture toward the authorization of “the international community.” By contrast, the case of U.S.-led nation building in Iraq precludes easy answers—and continues to do so even after formal political authority has shifted to Iraqis, with the recognition of the Security Council. Coalition troops remain on the ground in large numbers, and others will likely stay on for years. Nation building in Iraq is far from over. Our responsibilities to Iraq, and to ourselves, are not yet discharged. The ethical problems that this book considers will therefore remain alive in Iraq for years to come; and they will recur, in identifiable forms, whenever nation building is contemplated or undertaken.

A further distinctive feature of nation building in Iraq is, of course, the way the old regime ceased to be: not by internal collapse, but by overwhelming military force from without. Throughout its brief and eventful life, the CPA’s status reflected legal ambiguity about the invasion of Iraq—which the Coalition depicted as authorized by a UN Security Council resolution, but which was never subsequently ratified by the Security Council, only acknowledged.³ In this book, I do not propose to consider the legality or

wisdom of the U.S.-led removal of the regime of Saddam Hussein. Nor shall I even pose the related, extraordinarily complex question of when international intervention is justified, if ever. Other and better minds than mine have devoted enormous energy to the subject without exhausting it—and the debate, albeit altered by September 11, is still on.⁴ I want to focus, rather, on what happens after intervention is an accomplished fact—when the old regime is gone and a foreign power is calling the shots, whether it be the United Nations, NATO, or, as in 2003–4 in Iraq, a far narrower, U.S.-led coalition. On the ethical aspects of this topic there has been relatively little systematic thinking in the post–Cold War environment.⁵ We have a crop of memoirs about war and reconstruction in the former Yugoslavia,⁶ and some excellent studies of transitional justice and war-crimes tribunals.⁷ There is also a growing literature on the how-to side of nation building.⁸ Inspired by the problem of failed states, a small literature has grown up revisiting the option of international trusteeship.⁹ We do not yet have, however, a satisfactory account of why we should want to do such a thing as build nations and what the relevant principles are for making ethical sense of this goal.

The aim of this book is to jump-start an urgent conversation about the ethics of nation building. In the midst of all the heated, high-priority arguments about what policy would best serve U.S. interests in Iraq, it sometimes seems as though no one is asking what obligations we might have to the Iraqis whose government we deposed and whose country we occupied. The need is all the more pressing because of the tremendous complexities of the developing situation in Iraq, but it will persist even after Iraq recedes from the headlines. Realism and protective self-interest will play crucial parts in this conversation, to be sure; in what follows I seek to analyze problems of violence, security, and nation building in terms of the strategic incentives of various participants in a complex, multitiered engagement, because I do not think an account

without this perspective would be very useful in the real world. But this is not the whole story, either. If ethics are to be taken seriously, we must also consider our problem from the standpoints of law, democratic theory, and moral principle.

In the hope of rendering the discussion concrete, I have included plenty of particulars of the situation on the ground in Iraq, including circumstances I encountered personally. In doing so, I want to provide a taste of how ethical problems and doubts present themselves in the real time of nation building.¹⁰ But I also aim to do something more, something that a few astute listeners noticed (and to which some strongly objected) when I delivered an earlier version of my argument as the Walter E. Edge Lectures at Princeton in April 2004. I want to implicate you, the reader, in the subjective “we” of ethical obligation, no matter your views on war and reconstruction in Iraq or elsewhere. If you are reading this, I want to suggest, you can be called to account for your own role in considering and debating the ethics of nation building, and in shaping collective decisions for the future. This claim may be controversial, but making it seems to me the only point of an argument in ethics.¹¹ After all, there is no coercive authority in a book. All I can do is suggest a point of view, give my reasons for holding it, and invite you to try it on for size. What you do next is up to you.