

Justice in Baghdad

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"We are able to do away with domestic tyranny and violence and aggression by those in power against the rights of their own people only when we make all men answerable to the law."

-- Justice Robert Jackson, in his opening statement for the prosecution at the Nuremberg trials in 1945.

The rhetoric was soaring, the goals were grand, the ideals were large. And yet, by the standards of modern human rights and international law, the International Military Tribunal that tried and sentenced the Nazi leadership in Nuremberg should have been a failure.

From the start, the trials were clearly "victor's justice." Britain, France, the United States and the Soviet Union created the court with no real German or other "international" involvement. They called their ground rules a charter, not a law, to duck the question of the court's dubious legality. The list of defendants, limited to 20, was hardly comprehensive. At one point, Soviet prosecutors accused the Nazis of massacring some 20,000 Polish officers in 1940, a crime their government knew perfectly well the Soviet Union itself had carried out.

Yet Nuremberg was, in retrospect, a huge success, and as the trial of Saddam Hussein begins today in Baghdad, it is worth remembering why. If it achieved nothing else, Nuremberg laid out for the German people, and for the world, the true nature of the Nazi system. Auschwitz survivors and SS officers presented testimony. Senior Nazis were subjected to cross-examination. The prosecutors produced documents, newsreels of liberated concentration camps and films of atrocities made by the Nazis themselves. There were hangings at the end, as well as acquittals. But it mattered more that the story of the Third Reich had been told, memorably and eloquently.

Because it is taking place during an insurgency, and because it is run by Iraqis, not outsiders, the Iraqi Special Tribunal that will try Hussein and his henchmen is potentially weaker, and more easily manipulated, than the Nuremberg court. From the beginning, some Iraqi politicians have wanted to use the trial to launch a political attack on the Sunni Baathists, while others want to get the whole thing over with quickly, precisely to protect some of the Sunni community. Inexplicably, the U.S. military still controls the captured files of Hussein's government, still restricts Iraqi access to them and will also restrict who has access to the courtroom itself. Even Iraqis involved in the tribunal worry about the inexperience of the Iraqi judges and prosecutors, some of whom say privately that they are still afraid of Hussein, even sitting across from him in a courtroom.

Partly because of all that, and partly because they didn't much like the invasion of Iraq in the first place, the international human rights groups that are normally enthusiastic about trials of dictators are squeamish about this one. Human Rights Watch has said that the tribunal has an "inappropriate standard of proof," and it worries that the accused will not have adequate defense. The International Center for Transitional Justice complains of the "legal, administrative and procedural" issues that have not been resolved, quite apart from the political issues. There is a lot of high-minded grumbling about the death penalty that will, presumably, be the end result.

And yet -- if the court is able to compile a true record of events, if the judges are able to present authentic witnesses, and if tribunal spokesmen are able to communicate their findings to the Iraqi and international press, none of that matters. The fact that the court is starting with a smaller incident, the 1982 massacre of more than 140 Shiite men in the village of Dujail, is a good sign: The investigators do have witnesses, there is documentary evidence, and the story of Dujail is easier to tell than that of more complicated crimes, such as Hussein's genocide campaign against the Kurds or the Shiites of the south. Far from rushing or politicizing the trial, today's hearings will probably be followed by a delay, so more evidence can be gathered.

In the end, it is by the quality of that evidence, and the clarity with which it is conveyed, that this trial should be judged. The result is irrelevant: Quite frankly, it doesn't matter whether Saddam Hussein is drawn and quartered, exiled to Pyongyang, or left to rot in a Baghdad prison. No punishment could make up for the thousands he killed, or for the terror he inflicted on his country.

But if his Sunni countrymen learn what he did to Shiites and Kurds, if the Shiites and Kurds learn what he did to Sunnis, if Iraqis come to realize that his system of totalitarian terror damaged them all, and if others in the Middle East learn that dictatorships can be overthrown, then the trial will have served its purpose. That, and not an arbitrary standard of international law, is how the success of this unusual tribunal should be measured.

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