

Saddam and Iraq on Trial

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Editorial

The opportunity created by the trial of Saddam Hussein to introduce the rule of law and the idea of national reconciliation into Iraq has been largely squandered even before the courtroom proceedings begin. At almost every turn, ill-considered decisions by the United States and Iraq's dominant Shiite-religious and Kurdish-nationalist parties have put politics and score-settling first. The cost has been an indifference to legal scrupulousness, as well as a failure to distinguish between pursuing the specific crimes of a dictator that must be punished in a court and waging a collective vendetta by Kurdish and Shiite victims against the Sunni Arabs who were once their oppressors.

There is still time to shift this exercise in victor's justice to a more constructive course because the trial will adjourn for several weeks after today's televised opening. For that to happen, the Iraqi lawyers and judges will have to stand up to intense and continuing pressures from their political masters for a choreographed proceeding that seems timed to gain short-term advantages at the expense of national healing and an airing of recent Iraqi history.

When invading United States forces drove Mr. Hussein from power two and a half years ago, Americans naïvely expected rejoicing throughout Iraq and rapid efforts at democratic reconstruction. One main reason that did not happen, apart from the well-known mistakes by the American occupation authorities, was the arbitrary, violent and fragmented nature of the society left behind by the dictator, who had ruled through murder, fear and persecution.

One of the best ways to repair such a damaged society is a systematic judicial investigation of the old regime's crimes. That should be followed by a scrupulously fair trial of those found personally accountable. In the case of Iraq, where legal training and appointments had been bent for decades to the political whims of the dictatorship, that should have called for enlisting help from international legal experts and using relevant precedents in international criminal law. The Bush administration and its Iraqi allies strongly opposed that step because it would have excluded the death penalty.

Once the decision was made to rely on Iraqi lawyers and American advisers, they should have been well insulated from political pressures. Instead, the special tribunal organizing the trial has been subjected to constant manipulation and intimidation by Ahmad Chalabi, the ceaselessly conspiring émigré politician who has made anti-Baathist vendettas his latest political platform.

Finally, this prosecution would have been conducted differently if it were a serious attempt to uncover the murky lines of authority and responsibility within the Baathist

regime and establish Mr. Hussein's clear personal responsibility for at least some of the roughly 300,000 murders committed in his name. It would have built up its case methodically, from the field operatives carrying out the killings to the officials who gave them their orders and on up the chain of command to Mr. Hussein himself.

Instead, today's trial will begin with what prosecutors and politicians decided was the easiest case to prove, a mass execution in a Shiite town that followed a failed 1982 assassination attempt against Mr. Hussein. These killings ought to be prosecuted. But if the aim is to uncover the broader criminal conspiracy in order to punish the truly guilty and absolve those guilty only by association, other trials should have come first.

What we have is a narrow sectarian government, still struggling to come up with a nationally inclusive constitution, that is conducting what looks like a show trial, borrowing noxious elements of Baathist law to speed the way toward an early and politically popular execution.

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