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Inside Saddam's Trial

An international court conservatives can support.

By Gregory S. McNeal

It's been two years since Saddam Hussein's conviction and execution for killing 148 Iraqis in the town of Dujail, and until now, the true history of that trial was largely unwritten. Distortions and accusations, by contrast, have been common; [recently](#), for example, critics have renewed allegations that the Iraqi High Tribunal (the process set up to adjudicate the culpability of Saddam and his henchmen for crimes against humanity) failed to provide adequate due-process rights. The criticism is clear and familiar: Saddam's trial was unfair, tainted by torture and political influence, and failed to meet the standards advocated by human-rights groups and our more sensible European allies. This narrative, coupled with an unending stream of conspiracy theories, provides a perfectly timed platform for the release of the book [Enemy of the State: The Trial and Execution of Saddam Hussein](#).

The authors, law professors Michael A. Newton and Michael P. Scharf, are well known in the international criminal-law community. (I worked with both of them on my co-edited [book](#).) In *Enemy of the State* they provide an insiders' account of Saddam's trial and the Tribunal. Newton, a former Army officer, was in Baghdad as an adviser in December 2003 when the Tribunal was announced, Saddam Hussein was captured, and Paul Bremer declared, "We got him." He helped write the statute and the rules for the Tribunal and made multiple trips to Iraq during the trial to assist the judges and help prepare the opinions. He, along with Scharf and a team of experts, helped train the Tribunal judges (all Iraqis) and write the Tribunal's statute and rules. Scharf worked as attorney-adviser for law enforcement and intelligence in the State Department during the Bush 41 and Clinton administrations; he also provided legal research support and advice to the Tribunal. Their expertise and experience enriches the story, and unlike many law professors writing for a commercial audience, they keep their arguments free of legal jargon, clear and accessible.

I've often felt that the Iraqi High Tribunal was the type of international court that conservatives should embrace. The central premise of the Tribunal was that Iraqis were entitled to punish their former dictator according to their own laws, in what might be called the international-law version of federalism. Since Iraq had little experience under Saddam with legitimate due process, authorities there requested advice, assistance, and financial support from allied nations to make sure the Tribunal respected international law and human rights. Sadly, that vision was largely a non-starter amongst international human-rights advocates and Europeans who opposed the Tribunal's ability to impose the death penalty (which has existed in Iraq since the Code of Hammurabi); opposed the plan to base the Tribunal in Iraq, rather than in The Hague; and opposed the Iraq war itself, an issue that many opponents could not separate from the very distinct goal of

pursuing justice for the Iraqi people. So clear was the European opposition to the Tribunal that State Department legal adviser John Bellinger had to [turn to](#) the op-ed pages to plead for support, stating: “The international community is effectively boycotting the tribunal in spite of its insistent calls for justice and accountability . . .”

The authors situate their book within this framework of opposition, contemporary criticism, and the likelihood of future post-conflict situations. While some of their discussion of international standards, treaties, and laws may cause conservatives to pause, what the authors ultimately make clear is that human rights, at least as represented in *Enemy of the State*, are not the sole province of liberals or leftist advocates. Those rights are universal values that are also decidedly American. Moreover, they argue that the U.S. will continue to grapple with the questions at the heart of Saddam's trial. How do sovereign states apply international prohibitions against barbaric treatment of civilians? What is the best approach to rebuilding Iraq and dealing with the Muslim world? Where should we draw the line regarding what is acceptable in our fight against terrorists who would destroy our way of life? Should judges enforce the letter of the law no matter how unjust the consequences? If history provides us with any lessons, these questions will continue to come up in future conflicts.

The authors make clear their Reaganesque contention that the struggle against unconstrained evil is a common bond that crosses political, cultural, and religious boundaries to unite mankind. From the Nazis to the Ba'athists, Americans should be proud that our troops stood up to evil, and even prouder that our government worked hard to ensure that Saddam would be subjected to a judicial process that comported with fundamental standards of due process.

Of course, pride in this central conflict against evil assumes that one believes Saddam was in fact evil. The authors show that he was, in vivid detail. They obtained the satellite photographs that revealed the destruction Saddam ordered on the orchards around the town of Dujail. That order was intended to punish the civilian population for resisting his rule, and he employed tactics (bombing and bulldozing) that he later used against the Kurds. Today's headlines provide similar examples of tyranny as the world watches the Russians employ Saddam-style tactics in the farms, cities, and ports of Georgia. The authors aptly state that Saddam's trial “provided a snapshot of what tyranny looks like” and a “postmortem examination of a totalitarian regime.”

Their account makes clear that — despite liberal arguments to the contrary — Iraq is a better place with Saddam Hussein removed from power, prosecuted for his crimes, and executed. Moreover, the Move On/Code Pink/Daily Kos notion that Saddam became a martyr is thoroughly dismissed by the authors:

Iraq collectively shrugged amidst the speculation that execution would make Saddam a martyr. Once the celebrations ended, Saddam was gone. On the one-year anniversary of his death, there were no large-scale national celebrations, no mass protests, not even a spike in violence. As far as Saddam was concerned, the country had simply moved on.

Democracy could not have begun to take hold in Iraq without the valiant efforts of our troops (a point made repeatedly throughout the book), but Saddam's departure from this world after a trial by his own people certainly created breathing space for the fledgling, democratically elected government, helped diminish the motivation of the insurgency, and aided in the suppression of sectarian violence and terrorist attacks. The authors persuasively argue that if Iraq emerges from this period of instability as a unitary state with a democratic government, historians will point to the trial of Saddam Hussein as one ingredient (of many) for that success.

While the war in Iraq provides the backdrop for *Enemy of the State*, the book also makes a convincing case

that Americans should not fear all international criminal courts. Many conservatives agree with former Ambassador to the U.N. John Bolton and others in seeing the International Criminal Court as a threat to American sovereignty, but Saddam's trial was held in a different type of international court, one more protective of American sovereignty. While Americans couldn't unilaterally control the tribunal, any more than they could unilaterally command the Iraqi people, the policy of allowing Iraqis to chart their own course in crafting the rule of law, aided by U.S. experts, is a striking parallel with the military's efforts in training, equipping, and helping the Iraqi military to stand on its own against insurgents and terrorists.

Granted, in theory the U.S. could exert more influence over this sort of prosecution than over one held before a purely international court. This perception was perhaps another reason Europeans opposed the Tribunal. However, the reality reflects the stated U.S. policy under the Bush administration: Assist domestic governments seeking to strengthen their sovereign ability to prosecute war crimes, genocide, and crimes against humanity. The emphasis of the policy, demonstrated by the authors through the story of its implementation, was focused upon institution building and assistance, not control.

The book candidly makes clear that some in the U.S. government thought the Tribunal would be something that they could control, and that would protect U.S. interests. Yet Scharf and Newton document repeated instances that demonstrate how the Tribunal was largely (and for some, frustratingly) independent from U.S. influence. The authors conclude their analysis of efforts to control the Iraqis with a sage bit of advice for future diplomats and politicians: "Exercising a form of legal colonialism and imposing a process on the Iraqis would have created lasting illegitimacy in the region would have undermined the real respect for the rule of law across the Middle East and perhaps across cultures and continents." Unfortunately, as recent news reports make clear, perceptions of illegitimacy and accusations of a controlled and unfair process can trump reality and saddle both the U.S. and the Iraqis with unjustified blame. While the authors go far to undermine these critics, such nuanced and detailed counterarguments are unlikely to make the pages of the *New York Times*.

The authors clearly have a profound respect for members of the military, as evidenced by the book's dedication: "To Riyadh and John and all those who have sacrificed at the altar of freedom and human dignity." The authors explain that Riyadh and John, an Iraqi and an American, are emblematic of the thousands more who have sacrificed to move Iraq into freedom from the Ba'athist tyranny. The book's opening chapter, which discusses the liberation of Iraq, details the manhunt for and capture of Saddam Hussein and draws upon interviews with U.S. military personnel who were involved in the capture. The story of Saddam's trial, juxtaposed against the efforts of our troops in battle, highlights the fact that the sacrifices of those soldiers and others were not in vain. Iraqis, too, made enormous personal sacrifices to help their country towards a better future, resisting the call of militias and coming forward to testify under the threat of violence, and thus contributed to the peace that is beginning to take hold in Iraq today.

The trial of Saddam Hussein, like many American endeavors in the 21st century, has been largely misrepresented by the chattering classes. *Enemy of the State* is a substantial first step in countering the numerous myths, distortions, and outright lies about the quest for justice in Iraq. This story is one that the authors not only recount, but participated in, and for that reason, it should weigh heavily on the side of the truth. As always, however, history will be the ultimate judge.

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